

# Hosting Services Agreement

## Kaboomracks, Inc. Hosting Services Agreement

This Hosting Services Agreement (this "**Agreement**"), dated with effect as of May 5, 2024 (the "**Effective Date**"), is by and between {{contractwith}} ("**Client**") and Kaboomracks, Inc., with registered offices located at 2848 W Sweetwater Ave STE 2, Phoenix, AZ 85029. ("**Service Provider**"). Client and Service Provider are referred to in this Agreement as a "**Party**" and, collectively, as the "**Parties**."

### RECITALS

A. Service Provider is in the business of, and has the capability and capacity to provide hosting services and all related services with respect to crypto currency mining at its data center facility (the "**Facility**").

B. Client desire to retain Service Provider to provide such hosting and related services at the Facility with respect to Client's mining equipment, and Service Provider is willing to perform such hosing and related services, in each case under the terms and conditions of this Agreement.

### AGREEMENT

In consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

#### 1. Term and Services.

1.1 Term and Services Period. This Agreement is effective as of the Effective Date and will, unless earlier terminated in accordance with its terms or by agreement of the Parties, remain in effect for the specified number of months specified in EXHIBIT B - TERM LENGTH after the Effective Date (the "**Term**"). Services Provider's obligation to provide the Services will commence on the Effective Date and will continue through the end of the Term (the "**Services Period**").

1.2 Services Obligation. During the Services Period, Service Provider shall provide the Services to Client with respect to the Servers.

1.3 Non-Exclusive. Nothing in this Agreement prevents the Parties from performing or from acquiring services from other Persons that are similar to or identical to the Services.

#### 2. Rights and Ownership.

2.1 Handling. Client grants to Service Provider during the Services Term, the right to Handle the Servers solely to the extent required for provision of Services.

2.2 No Encumbrances. In no event will Service Provider have, and Service Provider shall not make, file, or pursue, any Encumbrance against the Servers, or any other property or assets of Client, and Service Provider irrevocably waives any such Encumbrance or right to claim any such Encumbrance.

#### 3. Service Providers Obligations.

3.1 Standards of Performance. Service Provider shall provide the Services and otherwise perform its obligations under this Agreement in accordance with (a) all Applicable Law and Authorizations required in connection with the performance of the Services and other obligations, (b) the terms and conditions of this Agreement, and (c) the agreed-upon Service Levels.

3.2 Affirmative Obligations. Without limiting the generality of Section 3.1:

(a) At all times during the Services Period, Service Provider shall have and maintain in good standing, all requisite Authorizations (including in respect of power supply) required for the performance of the Services;



(b) Service Provider shall cause all Services to be performed only by Persons that are appropriately qualified and legally authorized to provide the Services; and

(c) Service Provider shall ensure that the Facility and any other locations from which Service Provider performs any of the Services is at all times clean and in good condition. Service Provider shall ensure that the Facility and such other locations are secured, both physically and digitally, in accordance with standards and procedures that are not less protective than are customary employed by leading industry providers of similar services and other data center operators, including by using access control systems, security cameras, alarms, fire suppression, firewalls, intrusion monitoring, and other measures.

3.3 Restricted Actions. Without limiting the generality of Section 3.1 or any other prohibitions under this Agreement, Service Provider shall not:

(a) enter into or suffer to exist any agreement or other understanding between Service Provider and any other Person that would adversely affect, or could reasonably be expected to adversely affect, Service Provider's ability to perform the Services and its other obligations under this Agreement;

(b) allow Client's Servers to be subject to surveillance or manipulation by any Person other than Service Provider or its Representatives that have a need to do so in connection with the performance of the Services, including allowing monitoring devices, speed limiting software or hardware, or the addition of any type of malware (virus, trojans, etc.) to be introduced to Service Provider's network or facilities;

#### 4. **Client's Obligations.**

4.1 Instructions. Client shall promptly respond to any reasonable requests from Service Provider for instructions, information, or approvals required for performance of the Services.

4.2 Damage in Transit and Operation. Client is solely responsible for any damage to the Servers that occurs during shipping to the Facility, and for any incomplete Server that arrives at the Facility as well as for any damage, loss, or degradation of performance resulting from normal wear and tear (industry and market standards) from normal operations. Service Provider shall, promptly upon receipt of any Server, inspect such Server for damage or other deficiency, conduct periodic Server checks in subsequent operations and thereafter notify Client of any such damage or other deficiency identified. Service Provider shall follow all instructions of Client with respect to the handling and return of any Server that is determined to be damaged or deficient upon delivery, including by promptly arrange the return shipment of such Server at Client sole cost.

4.3 Use of Services. Client expressly acknowledges that the Facility has been purpose-built to support the physical requirements of Servers that perform crypto currency mining activities, and that such activities are the sole permitted use of the Services.

4.4 Mining Pools. Client is solely responsible for determining whether Client's Servers participate in any mining pool. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT SERVICE PROVIDER SHALL NOT HAVE, AND THAT CLIENT HEREBY EXPRESSLY AND KNOWINGLY RELEASES AND WAIVES ANY CLAIMS FOR LIABILITY ARISING IN CONNECTION WITH CLIENT'S MINING ACTIVITIES, AND THAT ALL SUCH ACTIVITIES, INCLUDING BUT NOT LIMITED TO CHOICES RELATING TO MINING POOL PARTICIPATION, ARE AT CLIENT'S SOLE DISCRETION.

#### 5. **Fees and Expenses.**

5.1 Fees and Expenses. In consideration of the Services to be performed under this Agreement, Client shall pay expenses actually incurred and paid by Service Provider, the applicable fees specified in Exhibit A. In addition to the payment of such fees Client shall reimburse Service Provider for all reasonable costs and expenses actually incurred and paid by the Client in accordance with Exhibit A for the performance of the Services.

5.2 Invoicing. Except as otherwise provided in Exhibit A, the calendar month is the billing period under this Agreement. Promptly on the 15<sup>th</sup> of the month, Service Provider shall prepare and submit an invoice for all fees and other amounts due between the Parties with respect to services, together with reasonable supporting documentation evidencing the amounts charged. Payment of the net amount due under such invoice will be due on the date that is 7 days after of Client receipt of an invoice and supporting documentation (or if such day is not a Business Day, on the next Business Day), any payments due under this section, shall accrue late

penalties and interest at the lower of (a) 1.5% of the outstanding balance per month, or (b) the maximum rate allowable by law, unless and only to the extent that Client is legitimately disputing any portion of that invoice, in which case Client shall pay the non-disputed portion in full within such 7-day period and shall also provide reasons justifying its position regarding the disputed portion within such 7-day period;

5.3 Payment. All payments shall be through the [hosting.kaboomracks.com](https://www.kaboomracks.com) website payment portal.

## 6. Confidentiality.

6.1 Confidential Information. All information and other data, including specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, lists, pricing, discounts, or rebates disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," is confidential ("**Confidential Information**"), except that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of a disclosure by Receiving Party or any of its Representatives; (b) is obtained by Receiving Party on a non-confidential basis from a Person that was not legally or contractually restricted from disclosing such information; (c) Receiving Party establishes by documentary evidence, was in its possession prior to disclosure hereunder; or (d) was independently developed by Receiving Party without using any Confidential Information.

6.2 Obligation of Confidentiality. Receiving Party shall hold in confidence all Confidential Information, shall protect such Confidential Information from disclosure using methods not less protective than those it applies to its own confidential information, and shall not use Confidential Information other than in connection with the performance of the Services. Receiving Party shall upon request return or provide Disclosing Party with evidence of the destruction of all Confidential Information.

6.3 Permitted Disclosure. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information to (i) a Governmental Authority to the extent legally required by the Governmental Authority or Applicable Law or to the extent necessary for the receiving Party to enforce its rights and remedies under this Agreement, in each case on the condition that, if appropriate, the Receiving Party has taken commercially reasonable efforts to receive confidential treatment by such Governmental Authority of the Confidential Information disclosed; and (ii) its Representatives that have a need to know such information in connection with this Agreement, subject to the condition that the recipient has agreed, or otherwise has an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

6.4 Liability and Remedies. Receiving Party is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Agreement or its use of such Confidential Information in breach of this Agreement.

## 7. Term, Termination, and Survival.

7.1 Renewal. The Agreement commences on the Effective Date and continues until terminated as permitted by this Agreement, and thereafter automatically renews for the additional Terms unless one Party notifies the other Party in writing not less than ninety (90) calendar days before such renewal of its desire for the order not to renew.

7.2 Early Termination. If, except as a result of uncured breach by the Service Provider, this agreement or the activities contemplated hereunder is terminated by the Client prior to the expiration of the term, the Client will forfeit their Security Deposit.

7.3 Default. A Party (the "**Non-defaulting Party**") may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), upon the occurrence and during the continuance of any of the following events or conditions with respect to the Defaulting Party:

(a) Other than as provided in this Section 7.3, the Defaulting Party fails to perform any of its material obligations under this Agreement and such failure is either (x) incapable of being cured, or (y) if capable of being cured, the Defaulting Party has not cured such failure within 30 days after receipt of written notice.

(b) The Defaulting Party (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or



similar law; (ii) has any such petition filed, or any such proceeding or cause of action commenced, against it if such petition, proceeding, or action is not discharged, dismissed, stayed, or restrained within 15 days following the filing or commencement thereof; (iii) makes an assignment or any general arrangement for the benefit of its creditors; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (vi) admits in writing its general inability to pay its debts as they come due.

(c) With respect to Service Provider as the Defaulting Party:

(i) Service Provider fails to maintain any insurance required under Section 14 and such failure is not cured within five (5) Business Days following discovery of such failure.

(ii) Service Provider fails to comply with any of the obligations set forth in Section 3.2 and such failure is not cured within five (5) Business Days following the discovery of such failure.

**7.4 Actions Upon Termination** . Upon any termination of this Agreement, Service Provider shall promptly:

(a) Return, at Client's expense and shipping risk, all Servers and other property, equipment, and materials of Client , free of any item installed by, or belonging to, Service Provider or any of Representatives of Service Provider; and

(b) provide, at Client's expense unless terminated under circumstances in which Service Provider is a Defaulting Party, such reasonable cooperation and assistance as Client may request in transitioning the Services to an alternate service provider ; and

(c) on a pro-rata basis, repay all fees and expenses paid in advance, if any, for Services not provided prior to such termination.

## **8. Independent Contractor.**

**8.1 Independent Contractor** . The Parties understand, acknowledge, and intend that the performance of Services by Service Provider under this Agreement are in the capacity of an independent contractor and not as an employee or agent of Client. Service Provider will control the conditions, time, details, and means by which it performs the Services.

**8.2 No Agency** . Neither Party nor any of its Representatives has any authority to commit, act for, or bind the other Party to any obligation or liability.

**8.3 No Benefits**. Service Provider and its Representatives are not eligible for and will not participate in any employee benefits or compensation plans offered by Client to Client's employee, including, without limitation, any payment under any employment standard legislation.

**8.4 Employment Taxes**. Neither Party has liability or responsibility for withholding or remitting any income, payroll, or other national, province, or local taxes for the other Party or any of its Representatives. Each Party is responsible for its own withholding, remitting, and registration obligations, and shall indemnify the other Party from and against any order, penalty, interest, taxes, or contributions that may be assessed due to that Party's failure or delay in making any such withholdings, remittances, or registration, or in filing any information required by any law, and shall be solely responsible for the payment of all taxes, unemployment insurance contributions, and all similar taxes and fees relating to the fees accrued by that Party hereunder.

## **9. Indemnification Obligations.**

**9.1 Non-Circumvention**. Without limiting the generality of section 1.3 of this agreement, the Client hereby agrees that it shall not directly or indirectly engage in discussions with or contract for substantially similar or identical services with any third party with whom the Service Provider is currently commercially engaged or with whom the Service Provider is currently proposed to be so engaged.

## **10. Indemnification Obligations.**

**10.1 By Service Provider**. Service Provider shall INDEMNIFY, DEFEND, AND HOLD HARMLESS Client, its affiliates, and its and their respective Representatives (each, a "**Client Indemnified Party**") from and against



any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable fees and costs of counsel), fees, and the costs of enforcing any right to indemnification or defense under this Agreement and the cost of pursuing any insurance providers (collectively, "**Losses**"), incurred by a Client Indemnified Party, relating to any third-party claim arising out of or occurring in connection with the gross negligence or willful misconduct of a Service Provider Indemnified Party.

10.2 By Client. Client shall INDEMNIFY, DEFEND, AND HOLD HARMLESS Service Provider , its Affiliates, and its and their respective Representatives (each, a "**Service Provider Indemnified Party**") from and against Losses relating to any third-party claim arising out of or occurring in connection with the gross negligence or willful misconduct of a Client Indemnified Party.

10.3 Limitation on Indemnity. Notwithstanding anything to the contrary in this Agreement, (i) Service Provider is not liable for and has no obligation to indemnify any Client Indemnified Party for any Losses to the extent such Losses are due to the violation of Applicable Law, fraud, negligent act or omission, or willful misconduct of such Client Indemnified Party, and (ii) Client is not liable for and has no obligation to indemnify any Service Provider Indemnified Party for any Losses to the extent such Losses are due to the violation of any Applicable Law, fraud, negligent act or omission, or willful misconduct of such Service Provider Indemnified Party. If the joint, concurrent, comparative, or contributory fault or gross negligence of the Service Provider Indemnified Party or Client Indemnified Party gives rise to any Losses which such Person is entitled to indemnification, then such Losses will be allocated in proportion to their respective degrees of fault or negligence contributing to such Losses.

#### 10.4 Indemnification Procedures.

(a) Notice of Proceedings. Promptly after receipt by the Client Indemnified Party or Service Provider Indemnified Party (the "**Indemnified Party**") of any claim or notice of the commencement of any action, administrative, or legal proceeding or investigation as to which an indemnity provided for in this Agreement may apply or promptly after an Indemnified Party has actual knowledge of other loss, liability, or damage that would result in a claim for indemnification, the Indemnified Party must (or if a Party, shall) notify the Party from which indemnification is sought (the "**Indemnifying Party**"), in writing of such fact, including a reasonably detailed description of the facts and circumstances relating to such claim, notice, loss, liability, or damage, and a complete copy of all notices, pleadings, and other papers related thereto. The delay or failure of the Indemnified Party to give the notice required pursuant to this Section 10.4(a) will not reduce or relieve the Indemnifying Party of liability hereunder except to the extent that such failure has a material adverse effect on the defense of the matter. In any event, the failure to so notify does not relieve the Indemnifying Party from any liability that it may otherwise have to the Indemnified Party other than under this Agreement.

(b) Conduct of Proceedings. The Indemnifying Party is entitled, at its option and expense, to assume and control the defense of any claim, action, suit or proceeding against the Indemnified Party, irrespective of whether the Indemnifying Party is joined therein, and the Indemnified Party shall cooperate fully with the Indemnifying Party in such defense. The Indemnifying Party has the right to control the defense and settlement of such claim, except that the Indemnifying Party shall not, without the consent of the Indemnified Party, agree to any compromise or settlement that (w) is not an unconditional release of the Indemnified Party from any and all liabilities, (x) includes remedies other than the payment of money that will be paid by the Indemnifying Party, (y) requires that the Indemnified Party admit fault or liability in connection with such settlement, or (z) relates to a violation of Applicable Law. Without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel will be the responsibility of such Indemnified Party unless (i) the Indemnifying Party has not employed counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or is not pursuing the defense of such claim with reasonable diligence and in good faith; (ii) in the reasonable opinion of the Indemnifying Party's and Indemnified Party's external counsel, such action, suit, or proceeding involves the potential imposition of criminal liability upon the Indemnified Party or an actual, material conflict of interest exists between the Indemnified Party and Indemnifying Party; or (iii) in the reasonable opinion of the Indemnifying Party's and Indemnified Party's external counsel, there may be specific defenses available to the Indemnified Party that are different from or additional to those available to the Indemnifying Party. In each case of the foregoing clauses (i) through (iii), the Indemnifying Party does not have the right to control the defense or settlement of such claim, and the reasonable fees and expenses of counsel engaged by the Indemnified Party are the responsibility of the

Indemnifying Party.

(c) Net of Insurance. The amount of any indemnity payment made under this Agreement will be reduced by the amount of all insurance proceeds received by the Indemnified Party in respect of the event giving rise to the right of indemnity.

## 11. Limitations on Liability.

11.1 Maximum Liability. EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, OTHER THAN IN RESPECT OF THOSE LIABILITIES THAT ARISE FROM OBLIGATIONS UNDER SECTION 11 OR FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PARTY, ARE LIMITED TO THE FEES PAID OR PAYABLE TO SERVICE PROVIDER UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE DATE WHERE THE EVENT THAT GAVE RISE TO THE LIABILITY FIRST AROSE. THE FOREGOING LIMITATION DOES NOT APPLY TO THE EXTENT OF THE AVAILABILITY OF INSURANCE WITH RESPECT TO SUCH LIABILITY.

11.2 Direct Damages Only. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS AND LIABILITY ARISING FROM SERVICE PROVIDER'S BREACH OF SECTION 3, EACH PARTY'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, OR (B) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12. Remedies.

12.1 Client Remedies for Breach. In the event Service Provider fails to satisfactorily perform any of the Services or other obligations on a timely basis, Client, may:

- (a) withhold and set-off payment of any amounts otherwise due under this Agreement against any damages caused to Client as a consequence of such failure;
- (b) exercise such other rights and remedies as may be available to Client under Applicable Law; and
- (c) take any combination of the forgoing actions.

12.2 Service Provider Remedy for Breach. In the event Client fails to satisfactorily perform any of its obligations on a timely basis, Service Provider, may:

- (a) withhold and set-off payment of any amounts otherwise due under this Agreement against any damages caused to Service Provider as a consequence of such failure;
- (b) exercise such other rights and remedies as may be available to Client under Applicable Law; and
- (c) take any combination of the forgoing actions.

12.3 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

13. **Representations and Warranties**. Each Party represents and warrants to the other Party as of the date of this Agreement that:

13.1 It is duly organized and validly existing under the laws of its jurisdiction of formation or organization, has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and is duly qualified in each jurisdiction wherein the nature of the business transacted by it in connection with this Agreement makes such qualification necessary.

13.2 It has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.



13.3 This Agreement has been duly and validly executed and delivered by it, constitutes its legal, valid, and binding obligations, and is enforceable against it in accordance with its terms (except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity).

13.4 There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened in writing against it, whether at law or in equity or before any Governmental Authority, that individually or in the aggregate are reasonably likely to have a materially adverse effect on its business, properties, or assets or its condition, financial, or otherwise, or to result in any impairment of its ability to perform its obligations under this Agreement.

13.5 The execution, delivery, and performance of this Agreement by it does not conflict with its governing documents; any Applicable Laws; or any material covenant, agreement, understanding, decree, or order to which it is a party or by which it is bound or affected.

13.6 There are no proceedings under applicable bankruptcy or insolvency law contemplated by it or, to its knowledge, threatened against it.

13.7 Each Party will use its best efforts to take all actions and to do all things necessary, proper, or advisable to consummate, make effective, and comply with all of the terms of this Agreement.

#### 14. **Insurance.**

14.1 During the Term, Service Provider shall, at its own expense, maintain and carry insurances in full force and effect in the following types and amounts:

(a) Commercial General Liability. Commercial general liability insurance with the following limits: \$1,000,000. Such coverage must include the following: all premises and operations, including products/completed operations, explosion, collapse, underground, separation of insureds, defense of terrorism (to the extent commercially available), and contractual liability (with no limitation endorsement).

(b) Commercial Automobile Liability. Commercial automobile liability insurance covering all owned, leased, hired, and non-owned automotive equipment with limits of \$1,000,000 per occurrence for bodily injury and property damage.

(c) Umbrella/Excess Liability. Umbrella/excess liability insurance provided on a form following basis with coverage limits of \$2,000,000 per occurrence and \$4,000,000 annual aggregate to apply to employer's liability, commercial general liability, and commercial automobile liability.

15. **Entire Agreement.** This Agreement, including and together with any related schedules, exhibits, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

16. **Notices** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") must be in writing and delivered in person or sent by email, commercial overnight delivery service, or registered or certified mail (postage prepaid), to the address of the Party specified in Exhibit A (Client Contact Information) or as specified in this section. Notice sent by mail, email, or hand delivery is effective on the day actually received, if received during the recipients normal business hours a Business Day, and otherwise will be effective at the beginning of the next Business Day. Notice by commercial overnight delivery service is effective on the next Business Day after it was sent. A Party may change its address for notices and other communications by providing notice to the other Party specifying its new address.

#### **Service Provider Contact Information:**

Attention: Legal Department

Address: 2848 W Sweetwater Ave STE 2, Phoenix, AZ 85029

Email: [legal@kaboomracks.com](mailto:legal@kaboomracks.com)

17. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this



Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. The Parties shall, however, in good faith attempt to agree on the replacement of the invalid, illegal, or unenforceable provision with a legally acceptable clause that corresponds as closely as possible to the sense and purpose of the affected provision.

**18. Amendments and Modifications.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

**19. Waiver.** No waiver by any Party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or will be construed as a waiver thereof, nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**20. Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective successors and assigns.

**21. No Third-Party Beneficiaries.** Except for Section 11 (which is for the benefit of the Persons reference in such section), this Agreement is for the sole benefit of the Parties and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**22. Dispute Resolution.** If any dispute arises in connection with this Agreement, the Parties will attempt to settle it by good faith negotiations. In the event that the dispute is not settled by negotiation within thirty (30) days of either Party giving notice of the dispute to the other Party, either Party may give to the other Party a written notice requiring resolution by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and the laws of the United.

**23. Force Majeure.**

**23.1 Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from event or condition that (w) arises after the Effective Date, (x) is not attributable to fault or negligence of the affected Party or any of its Representatives, (y) is caused by factors beyond the reasonable control of the affected Party and, if applicable, the reasonable control of its Representatives, specifically including lack of network availability and public utility power supply failures, and (z) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate, or overcome such event or condition and the consequences thereof, the affected Party has been unable to prevent, avoid, mitigate or overcome such event, condition, or consequences ("**Force Majeure Events**"). Force Majeure Events may include, to the extent satisfying the foregoing: (i) acts of God; (ii) flood, tsunami, fire, earthquake, or explosion; (iii) epidemics, pandemics; (iv) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (v) government order, law, or actions; and (vi) embargoes or blockades. Force Majeure Events may not be based on financial inability to perform; changes in cost or availability of materials, components, or services; market conditions; or supplier actions or contract disputes.

**23.2 Excuse.** As a condition of the right to claim relief as provided in Section 2 2.1, the affected Party must give notice to the other Party within seven (7) days of the Force Majeure Event, stating the period of time the occurrence is expected to affect such Party's performance. The affected Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the affected Party's failure or delay remains continues for a period of 30 consecutive days following notice of the Force Majeure Event, the other Party may terminate this Agreement upon seven (7) days' notice.

**24. Captions.** The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

**25. Survival.** In addition to any provision of this Agreement that by its terms survives termination, any provision of this Agreement that contemplates performance following termination or that would reasonably be

anticipated to survive termination, including provisions regarding payments, transition services, indemnities, remedies, confidentiality, applicable definitions, limitations on liability, governing law, jury waiver, venue, and notices, will survive the termination of this Agreement.

26. **Venue.** The Parties hereto hereby consent (a) exclusive jurisdiction on any federal, state, or local court based on the physical location of the servers hosted hereunder and (b) agree that this agreement and all subsequent or subsidiary agreements shall be interpreted under the laws of the United States of America and the State of Delaware without regard to the law of conflict of principles, for (c) any case or controversy arising either, directly or indirectly, under or in connection with this Agreement and all subsequent or subsidiary agreements .

27. **Counterparts.** This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute but a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an "original" for all purposes.

## Exhibit A

### HOSTING STATEMENT OF WORK

This Exhibit A sets out the specifications for the provision of Services for hosting servers at the Facility.

#### 1. Term Length

a. The Term Length of the agreement is defined in **Exhibit B - HOSTING ORDER** as the contract length.

#### 2. Client Contact Information

**Attention:** {{customer\_wp\_user\_firstname}} {{customer\_wp\_user\_lastname}}

**Address:** {{billing\_address\_1}} {{billing\_address\_2}} {{billing\_city}}, {{billing\_state}},  
{{billing\_postcode}} {{billing\_country}}

**Email:** {{customer\_wp\_user\_email}}

#### 3. Definitions

a. In addition to the capitalized terms set out under the body of the Agreement, the following terms have the following meanings:

**"Downtime"** means any period during which a Server is unable to perform computations as normal or access the Internet, as measured using industry standard tools, expressly excluding Scheduled Downtime.

**"Scheduled Downtime"** means any time that a Server is not powered up and performing in accordance with the specifications because of authorized upgrades, changes (including swap-out or other repairs and modifications), or any other processes which are agreed upon and required for the provision of Services.

**"Supply Side Interruption"** means any interruption in electricity supply to the Servers that arises from the electricity supplier (including when such supplier is experiencing peak demand for electricity or is subject to other disruptions (whether due to weather, brown-outs, or intentional downtime)) and which leads to a Downtime or has potential to lead to a Downtime.

**"Uptime"** means for a period of determination, the amount equal to the number of hours in the period *minus* the hours of Downtime *divided by* the total number of hours in the period.

#### 4. Shipping and Receiving Services

Service Provider shall:



- a. advise Client of any changes in the delivery protocols in respect of deliveries of the Servers; and
- b. unpack and inspect all Servers upon receipt at the Facility and at the earliest occasion where any Servers are suspected or actually noted to be damaged or not operating in a routine manner, promptly inform Client and arrange for a swap-out of any effected Servers;
- i. Service Provider will not be responsible for any damage or loss to the extent caused by the actions of any Person prior to receipt of the Servers at the Facility; and
- c. at the agreed-upon handling fees herein, swap-out, remove, or otherwise take all actions in respect of Servers as reasonably requested by Client, using, in the case of shipping, either the courier of the Client's choice or a reputable courier. The Service provider shall not be responsible for theft, damage, or loss of the Servers during shipment.

## 5. Set-up Services

- a. Service Provider shall set up all Servers in accordance with an agreed-upon schedule and configuration, ensuring that:
  - i. the Facility's ventilation and temperature control is adequate to keep reasonable operating temperatures in the Facility;
  - ii. in a commercially reasonable manner, accommodate any specific request the Client may make in respect to the Servers and their setup.
- b. Service Provider shall in each instance where requested in writing, swap-out any Servers within 2 business days of receipt of a new Server and execute all actions reasonably requested in regards to the relevant swapped out Server, including, returning of such Server.

## 6. Operation and Maintenance Services

Service Provider shall;

- a. monitor each Server to determine if that Server is functioning in accordance with the agreed-upon specifications and as needed:
  - i. if in the event any Server non-performance is interrupting the mining of the cryptocurrency, attempt to resolve such non-performance within 24 hours of discovery of such non-performance;
  - ii. reboot any frozen Server within 24 hours for proper functioning and in the event such reboot does not produce the desired result, notify Client within 24 hours of such failure and seek further instructions from Client and execute such reasonable instructions as provided within six hours of receipt of instructions; and
  - iii. in the event Service Provider performs a complete factory reset for a Server on Client's request, reconfigure the Server to the latest configuration specified in the configuration parameters for that Server.

If the foregoing actions do not produce the intended result, the Server will be deemed "dead" and Service Provider will ship such Server to Client at Client's cost;

- b. monitor and fix trivial failures, in a timely manner;
- c. provide Client access to the Foreman mining management software to monitor the status of the Clients Servers;
- d. ensure Uptime of at least 95% during each month;
- e. in the event of any suspected or actual electricity supply issue or a Facility security issue which may or actually impacts the performance, security, or integrity of the Servers:
  - i. notify Client promptly upon first noticing such issue;
  - ii. undertake, on an urgent basis, all commercially reasonable actions to resolve such issues, and where such issues have arisen solely from your facilities, personnel, or actions, execute all reasonable actions to



overcome the issue and to provide Services in accordance with the specifications herein;

iii. not credit Client any Service Level credits for Downtime in the event the Downtime is caused solely by Supply Side Interruption, but in such event, revise the Fees applicable to the month by charging Client Fees only for the actual Uptime for the Servers.

**7. Fees**

a. Client shall pay the following fees ("Fees") at the rates and amounts set out below.

i. **Operation and Maintenance Service Fees** Operation and Maintenance Service Fees are defined in **Exhibit B - HOSTING ORDER** as Next PaymentTotal under **Related Subscriptions**.

i. **Advanced Payment**

A. 3 months of Operation and Maintenance Services Fees which shall be considered a security deposit (the "Deposit")

B. Payment for each month will be due on the 15<sup>th</sup> of the month prior month.

ii. **Payment Due Date**

A. Payment for each month will be due on the 15<sup>th</sup> of the prior month.

iii. **Shipping and Receiving Services**

A. Applicable shipping fees for all returned/swaped-out Server; and

B. \$60 per hour of requested service billed at 15 minute increments.

**Exhibit B  
HOSTING ORDER**

This Exhibit B contains the products and services order by the client. This section indictes the monthly subscription fee and the term in years of the contract.

**Signature page -**

The Parties hereto have caused this Hosting Services Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

X \_\_\_\_\_

X *Greg Bachrach* \_\_\_\_\_

Signed By Greg Bachrach  
Signed On: April 18, 2023



# Signature Certificate

Document name: Hosting Services Agreement

🔒 Unique Document ID: CAB4EA1704AA41F4E55AEE61D88A7F5DE49EC539

LEGALLY SIGNED USING  
**WP***signature*  
Build. Track. Sign Contracts.

## Timestamp

January 21, 2023 10:23 am  
MST

## Audit

Hosting Services Agreement Uploaded by Greg  
Bachrach - greg@kaboomracks.com IP 24.56.47.180



This audit trail report provides a detailed record of the online activity and events recorded for this contract.

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