

Dedicated Server and Bandwidth Services Contract

Date:
Company Name:
Contact:
Address:

Email:

GENERAL TERMS AND CONDITIONS

1. **Services.** GEKKO IT agrees to supply the services described herein (the “Services”) in accordance with the terms of this Contract. Customer agrees to receive the Services from GEKKO IT in accordance with the terms of this Contract. The Customer has purchased an unmanaged service and (unless in accordance with clause 2) GEKKO IT shall have no liability or obligations to perform consultative, administrative, maintenance or other services.
2. **Other Services.** Upon request by Customer, GEKKO IT may at its option, provide Customer with technical and non-technical support, such as equipment reboots, troubleshooting, DNS and other support (“Other Services”), in connection with Customer’s use of the Customer Space and Bandwidth Services and the costs for providing such services shall be agreed in advance in writing by the parties.
3. **Effective Date:** The effective date shall be 5th May 2012 (the date noted in Schedule 1) or the date the Customer connects to GEKKO IT, whichever is first (hereafter called the “Effective Date”).
4. **Term.** The Term of this Contract will commence on the Effective Date, and will continue thereafter for the Term specified in the Service Contract, unless terminated by either party as permitted by this Contract. This Contract shall automatically renew for a period of subsequent one (1) month periods unless written notice is provided by either party to the other at least thirty (30) days prior to the expiration date.
5. **Payment.**
 - 5.1 Customer will pay GEKKO IT the One-Time Install Fees and Recurring Monthly Fees specified in the Service Contract.
 - 5.2 All One-Time Install Fees will be payable on or before the Effective Date. All Recurring Monthly Fees will be payable monthly in advance.
 - 5.3 Except for the first payment shown in the Service Contract, which must be paid by Customer to GEKKO IT before commencement of the term, all amounts will be payable monthly by standing order to GEKKO IT business bank account.
 - 5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against GEKKO IT in order to justify withholding payment of any such amount in whole or in part.

6. **Customer Default.** For the purposes of this Contract, each of the following shall be an "Event of Default": (i) Customer fails to make any payment of fees or other payment required under this Contract, as and when due; or (ii) Customer fails to observe or perform any of the covenants, conditions or provisions of this Contract to be observed or performed by Customer.
7. **Consequences of termination.** On termination of this Contract (however arising): (i) the Customer shall immediately pay to GEKKO IT all of GEKKO IT's outstanding unpaid invoices and interest and, in respect for Services supplied but for which no invoice has been submitted, GEKKO IT shall submit an invoice which shall be payable by the Customer immediately on receipt; (ii) subject to clause 10, all licenses and rights of access granted under this Contract shall immediately cease; and (iii) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
8. **Holding Over.** If Customer continues to occupy the Customer Space following the expiration or termination of this Contract with GEKKO IT's consent, then such holding over shall constitute a renewal of this Contract on a month-to-month basis.
9. **Credit Authorization.** Customer hereby authorizes GEKKO IT and gives consent to GEKKO IT under applicable data protection and privacy laws for GEKKO IT to obtain credit information and bank and other financial references regarding Customer for the purposes of assessing Customer's credit worthiness, and Customer will promptly execute and deliver to GEKKO IT such further documents and assurances and take such further actions as GEKKO IT may from time to time reasonably request in order to carry out the intent and purpose of this section.
10. **Limitation of Liability.** Customer acknowledges that GEKKO IT permits other customers to install their equipment in the premises. GEKKO IT will have no liability for any damages, costs, or losses incurred by Customer (or its clients) caused by such other Customers' acts, equipment, or failures to act. The limit of GEKKO IT's liability in contract, tort (including negligence) or by statute or otherwise to Customer (or its clients) concerning performance or non-performance in any manner related to this Contract, for any and all claims will not, in the aggregate, exceed the total fees paid by customer to GEKKO IT under this Contract in the immediately preceding one month from the date the claim arose. In no event will GEKKO IT be liable for any special, indirect, consequential, incidental or punitive damages, or for loss of profits, loss of business, depletion of goodwill or loss or corruption of data. All warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law. Customer acknowledges that this limitation of liability and waiver of damages is a material term of this Contract and that GEKKO IT would not enter into this Contract in the absence of this waiver.
11. **Force Majeure.** Neither party will be liable for any delay, interruption or failure in the performance of its obligations if caused by acts of God, war, declared or undeclared, fire, flood, storm, slide, earthquake, or other similar event beyond the control of the party affected ("Force Majeure"). If any Force Majeure prevails for a continuous period of more than 3 months, either party may terminate this agreement by giving 7 days' written notice to the other party. On the expiry of this notice period, this Contract will terminate and such termination shall be without prejudice to the rights of the parties in respect of any breach of this Contract occurring prior to such termination. The party claiming the Force Majeure will use commercially reasonable efforts to eliminate or remedy the Force Majeure. This section will not apply to excuse a failure to make any payment when due.
12. **Reselling.** Under this Contract Reselling is not permitted by customer taking any services with GEKKO IT. Other private URL's are allowed to be hosted from the server where no profit is to be made. Bandwidth limits for hosting extra URL's must be maintained.
13. **Confidentiality.** A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 16 shall survive termination of the Contract.
14. **Miscellaneous.**

15. **14.1 Notices.** All approvals, requests, authorizations, directions or other communications under this Contract, with the
16. exception of maintenance notifications, will be given in writing to the party at the address first set forth above for such party and will be deemed to have been delivered and given for all purposes (i) on the delivery date, if delivered personally; (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt, if sent by courier; and (iii) upon personal acknowledgement by the recipient, if sent by email.
17. **Access and Entry - Colocation Only:** Subject to the terms of this Contract and compliance with payment terms under clause 5, Customer will have unrestricted access to the Premises during the Term as long as accompanied by a GEKKO IT member of staff. Failure to comply with the payment terms may result in denial of access. GEKKO IT shall not be required to provide Premises access to any person not approved by GEKKO IT. Notwithstanding the above, GEKKO IT shall not be liable for the consequence of admitting or refusing to admit to the Premises or Customer Space, Customer's agents or employees or other persons claiming the right to admission.
18. **Access - Colocation Only:** No more than three Customer Persons will be authorized to have access to the Premises at any one time and must be accompanied by a GEKKO IT staff member at all times.

ACCEPTABLE USE POLICY (AUP)

1. Users may not:

2.
 - a. Utilize the Services to send mass unsolicited e-mail to third parties. Users must ensure that such transmissions comply with all applicable laws and regulations.

Utilize the Services to be involved in the distribution of tools designed for the aiding of Unsolicited Bulk Email (UBE).

Utilize the Services in such a way that User becomes documented on a recognized SPAM abuse list or if the User has previously been denied access from another provider due to acceptable use policy violations.

Utilize the Services in connection with any illegal activity. Without limiting the general application of this rule, Users may not:

- i. Utilize the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization;
- ii. Utilize the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party;
- iii. Utilize the Services to traffic in illegal drugs, illegal gambling, obscene materials or other any products or services that are prohibited under applicable law;
- iv. Utilize the Services to export encryption software to points outside of the United Kingdom in violation of applicable export control laws; or
- v. Utilize the Services in any manner that violates any applicable local or international law.

Utilize the Services in connection with any tortious or actionable activity. Without limiting the general application of this rule, Users may not:

- vi. Utilize the Services to publish or disseminate information that (A) constitutes slander, libel or defamation, (B)
- vii. publicizes the personal information or likeness of a person without that person's consent or (C) otherwise violates
- viii. the privacy rights of any person.
- ix. Utilize the Services to threaten persons with bodily harm, to make harassing or abusive statements or messages, or
- x. to solicit the performance of acts or services that are illegal under applicable law.

Utilize the Services in connection with any other disruptive or abusive activity. Without limiting the general application of this rule, Users may not:

- viii. Utilize the Services to cause denial of service attacks against GEKKO IT or other network hosts or internet users or to
- ix. otherwise degrade or impair the operation of GEKKO IT's servers and facilities or the servers and facilities of other
- x. network hosts or internet users;
- xi. Utilize the Services to offer mail services, mail forwarding capabilities, POP accounts or auto-responders other than
- xii. for the User's own account;
- xiii. Utilize the Services to subvert, or assist others in subverting, the security or integrity of any system, facilities or equipment;
- xiv. Utilize the Services to gain unauthorized access to any computer networks or any other person;
- xv. Utilize the Services to provide passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code;
- xvi. Utilize the Services to (A) forge the signature or other identifying mark or code of any other person, (B) impersonate or assume the identity of any other person, or (C) engage in any other activity (including "spoofing") to attempt to deceive or mislead other persons regarding the true identity of the User (excluding the use of anonymous remailers or internet nicknames);
- xvii. Utilize the Services to distribute or post any virus, worm, trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the Services;
- xviii. Utilize the Services to conduct port scans or other invasive procedures against any server (except any server for which the User is an authorized system administrator);
- xix. Utilize the Services to distribute, advertise or promote software or services that have the primary purpose of encouraging or facilitating unsolicited commercial e-mail or spam;
- xx. Utilize the Services to solicit or collect, or distribute, advertise or promote, e-mail address lists for the purpose of encouraging or facilitating unsolicited commercial e-mail or spam;
- xxi. Utilize the Services in any manner that might subject GEKKO IT to unfavorable regulatory action, subject GEKKO IT to any liability for any reason, or adversely affect GEKKO IT's public image, reputation or goodwill, including, without limitation, sending or distributing sexually explicit, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by GEKKO IT in its sole discretion; or
- xxii. Utilize the Services in any other manner to interrupt or interfere with the internet usage of other persons.

2. Violations

- a. Disclaimer and Assumption of Risk.** Notwithstanding this Policy, Users of the internet (including the Services) make such use at their own risk, acknowledging that there are known and unanticipated risks associated with internet use, some of which could result in physical, emotional or psychological injury or even death, or damage to individuals, to property, or to third parties. Such risks cannot be eliminated without jeopardizing the essential qualities of use of the internet. These risks include, among other things: credit card theft, identity theft, fraud, solicitation, stalking, invasion of privacy, unwanted receipt of offensive or obscene material, trespass to chattels or denial of service attacks. GEKKO IT expressly disclaims any obligation to monitor its Customers and other Users with respect to violations of this Policy. GEKKO IT has no liability or responsibility for the actions of any of its Customers or other Users or any content any User may post on any web site. Users voluntarily engage in the activity of internet use and bear the risks associated with that activity.
- b. Reporting Non-Copyright Violations.** GEKKO IT encourages Users to report violations of this policy by e-mail to: support@gekkoit.co.uk, including in any such report the name of the offending domain (for example, xyz.com), the IP address and the type of abuse (for example, spam, illegal acts, harassment, etc.) in the "subject" field of the e-mail.
- c. Remedies.** If GEKKO IT learns of a violation of this Policy, GEKKO IT will respond to the applicable Customer and may, in GEKKO IT's sole discretion, take any of the following actions, in accordance with the severity and duration of the violation:
 - i. Warning the Customer;
 - ii. Suspending the offending Customer from the Services;
 - iii. Terminating the offending Customer from the Services;
- iv. Imposing fees or charges on the offending Customer account in accordance with the applicable service contract;
- v. Removing the offending content; and
- vi. Taking other action in accordance with this Policy, the applicable service contract or applicable law.

SERVICE LEVEL AGREEMENT (SLA)

GEKKO IT has implemented a high-availability internet transit network infrastructure, available within secure co-location facilities. This has been accomplished by the following:

1. Multiple upstream providers
2. Fully redundant OCn backbone network
3. All network devices have onsite spares
4. All key network components are monitored 24x7

Service Level Contract Terms for Onsite Dedicated Server Customers

GEKKO IT will provide 100 % uninterrupted transit to the internet to all dedicated server customers who have purchased said service from GEKKO IT. Should transit to the Internet become unavailable for a cumulative period up to 6 hours in any one calendar month, Customer will receive a refund equivalent to one day of Customer's pro-rated recurring monthly fees for that month.

Customer will receive an additional refund of one day of the pro-rated internet connectivity recurring monthly fees for each additional hour, or portion thereof, of unavailability. All refund calculations will be based on unavailability in one-hour increments. The above agreement does not cover outages caused by equipment and/or events not under the direct control of GEKKO IT or caused by individuals not directly employed by GEKKO IT. This service level agreement does not cover outages due to scheduled or emergency network and/or facility maintenance, which will be broadcast to all customers in advance, and will not exceed 1 hour

per month. Any and all refunds to Customer will not exceed 50% of the Customer's recurring monthly fees for the month in which the unavailability occurred.

Performance Guarantee

GEKKO IT will maintain its network in such a manner as to provide to all customers the best possible performance to the Internet. In order to achieve this GEKKO IT makes the following guarantees to all onsite dedicated server customers:

- 99% guaranteed uninterrupted transit to the internet
- Zero packet loss internal to GEKKO IT network
- In addition to the above performance guarantees GEKKO IT will take all reasonable measures to insure all Customer traffic reaches its destination in a timely fashion comparable and within reason to any other carrier in the area. These measures include the manipulation of routing tables so as to direct traffic to the internet using its best possible upstream link.
- By signing below, each party acknowledges that it has read, understands, and agrees to the terms of this Colocation Services Contract.