



UK Dedicated Servers Limited

Terms Of Service

Last Revision: 04/07/2006



Terms and Conditions

1. Definitions and Interpretations

1.1 In the conditions:

"Accepted Order" means an Order which has been accepted by the Company, acceptance being indicated by an Order being signed by the Company and returned to the Customer;

"Customer Equipment" means any equipment owned by the customer or which is supplied by UK Dedicated Servers Limited for purchase by the customer under an accepted order;

"Customer Site" means any premises owned, leased or licensed by the Customer and specified in a Service Order at which the Service is to be provided;

"Customer Support" means any assistance provided by the UK Dedicated Servers Limited staff in relation to the Customers service;

"The Company" means UK Dedicated Servers Limited of 61 Somers Road Industrial Estate, Somers Road, Rugby, Warwickshire, CV22 7NA;

"Force Majeure Event" means any cause beyond a Party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, war, strike, embargo, acts of governmental authority (including refusal or revocation of any license or consent), Act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, inability to secure materials, power failure, industrial disputes (excluding disputes involving employees of either Party) and acts or omissions of other providers of telecommunications services;

"Goods and or Services" means to be any item which the company provides to the customer;

"Network" means the telecommunication system over which UK Dedicated Servers Limited provides the applicable Services;

"Notified Maintenance" means essential maintenance to be carried out by UK Dedicated Servers Limited in relation to the Services, Hardware and/or Software, which has been notified to the Client;

"Password" means those words, passwords or keys notified to the Client by UK Dedicated Servers Limited which control the Clients access to some of the Services;

"Renewal Date" means the date of anniversary of the service start date;

"The Customer" means the person or company with whom goods and services are to be supplied to;

"Services" means the communication or data services more particularly described on the Service Order;

"Service Charge" means the recurring charge for use of the Service as set out in the applicable Service Order;

"Service Commencement Date" means the date set out in the applicable Service Order; **"Service Order"** means a request for Services to be provided under the terms of this Agreement;

"Unmanaged" means the company takes no responsibility for any software and 3rd party programs used in conjunction with the service provided by UK Dedicated Servers Limited;



2. The Service

- 2.1 UK Dedicated Servers Limited reserve the right to decline services and goods to the customer.
- 2.2 UK Dedicated Servers Limited does not guarantee the setup and provision of a service by a certain date unless otherwise stated in the Accepted Order.
- 2.3 The customer is required to ensure all software being used on the service UK Dedicated Servers Limited provides is up to date and secure.
- 2.4 UK Dedicated Servers Limited reserves the right to perform notified maintenance on all services provided to The Client and wherever possible will provide advanced notice of such maintenance.
- 2.5 The customer must ensure they provide UK Dedicated Servers Limited with a valid name, address, telephone and email contact address. The customer must inform UK Dedicated Servers Limited of any change in their contact details within three days of any changes.
- 2.6 UK Dedicated Servers Limited may use UK Dedicated Servers Limited Affiliates or sub-contractors to perform some or all of its duties and/or obligations under this Agreement.
- 2.7 The Customer must ensure his usage of the service provided by UK Dedicated Servers Limited is within the guidelines set out in the UK Dedicated Servers Limited Acceptable Usage Policy or AUP.
- 2.9 In the event of a server crash, once notified, UK Dedicated Servers Limited will endeavour to restart The Client's server as soon as possible but offer no timed guarantee. The Client may have access to an automatic reboot switch, in which case an instantaneous reboot may be possible. UK Dedicated Servers Limited make no guarantee as to the functionality of the reboot switch, but will make all reasonable endeavours that the reboot switch is functioning properly.
- 2.9 The service UK Dedicated Servers Limited provides is unmanaged, although the Company will attempt to provide support for any 3rd party software and programs, no guarantees is made on the level of support UK Dedicated Servers Limited provides for any 3rd party software.
- 2.10 Any problems caused by The Customer to service, (which include, but are not limited to, deletion of necessary operating system files, accidental or intentional infection by a virus/Trojan) may result in extra charges to The Client.
- 2.11 1 UK DEDICATED SERVERS LIMITED shall have the right upon prior written notice to relocate the Customer Equipment. In the event of an emergency, UK DEDICATED SERVERS LIMITED may relocate the Customer Equipment within such time as may be reasonable and without prior written notice as the circumstances reasonably warrant. The site of relocation shall be comparable to the initial Licensed Space.
- 2.12 Subject to 20.1, UK DEDICATED SERVERS LIMITED reserves the right at its own expense to change the location or configuration of the Licensed Space, provided however that UK DEDICATED SERVERS LIMITED shall not arbitrarily or discriminatorily require such changes.

3. Payment

- 3.1 The Customer shall pay the Charges for the Services set out in the Service Orders.
- 3.2 UK DEDICATED SERVERS LIMITED shall be entitled 30 days before and at any time after the expiry of the Service Term to increase Service Charges for a Service upon thirty (30) days written notice to the Customer.
- 3.3 UK Dedicated Servers Limited shall invoice the customer eight days before their service renewal date. The customer must provide notice of all cancellations prior to this, eight days before their service renewal date.
- 3.4 UK Dedicated Servers Limited requires all invoice to be paid within ten days of creation, failure to pay an invoice by the Due Date will result in service suspension and a £10 reconnection fee will be charged. UK Dedicated Servers Limited also reserves the right to prohibit the customer access to their equipment or data if the Customer has overdue invoices.
- 3.5 Interest shall accrue on overdue invoices from the due date until payment (whether before or after judgment) at the rate of 1.5% per month. Interest shall accrue notwithstanding termination of this Agreement or any Service for whatever reason.



3.6 All sums due to UK DEDICATED SERVERS LIMITED are exclusive of value added tax and any other applicable sales tax or duty which shall be invoiced and payable at the then prevailing rate.

3.7 In the event that the Customer fails to make payment of any invoices in accordance with Clause 3.6, UK DEDICATED SERVERS LIMITED shall be entitled in addition to any other right of remedy which it might have under this Agreement or otherwise at law to set off any sums owing to it from the Customer against any deposit provided to it in accordance with Clause 2.3.

3.8 Burst charges are calculated on 95th Percentile, 5 minute average model and shall be due 14 days after the end of the month for which the burst figures were calculated upon.

3.9 The Customer hereby acknowledges and agrees that its obligations to pay all amounts and charges due hereunder, and the rights of UK DEDICATED SERVERS LIMITED to such payments shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, including, without limitation, any set-off, abatement, counterclaim, suspension, recoupment, reductions, rescission, defense or other right or claim that Customer may have against UK DEDICATED SERVERS LIMITED.

3.10 UK DEDICATED SERVERS LIMITED reserve the right to charge a £10 fee for any hardware removal from their racks.

3.11 UK DEDICATED SERVERS LIMITED understands and will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms.

4. Service Suspension

4.1 UK DEDICATED SERVERS LIMITED may, at its sole discretion and without prejudice to any right which it might have to terminate this Agreement or a Service, elect to suspend forthwith provision of any Service until further notice in the event that:

- (a) UK DEDICATED SERVERS LIMITED is entitled to terminate this Agreement or such Service; or
- (b) UK DEDICATED SERVERS LIMITED is obliged to comply with an order, instruction or request of government, an emergency service organisation or other competent administrative authority which affects its ability to provide the Service

4.2 UK DEDICATED SERVERS LIMITED may from time to time suspend a Service in accordance with any applicable SLA to carry out any necessary maintenance work to the Network or the Service Equipment.

4.3 In the event the suspension is implemented as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay UK DEDICATED SERVERS LIMITED all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service and UK DEDICATED SERVERS LIMITED may recover any other losses suffered as a result of such breach, fault, act or omission.

4.4 UK DEDICATED SERVERS LIMITED shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension pursuant to Clause 4.1 save where the circumstances set out in Clause 4.1 are solely attributable to the negligence of UK DEDICATED SERVERS LIMITED.

5. Indemnity

5.1 The Client agrees to fully indemnify and keep UK Dedicated Servers Limited, its subsidiaries, affiliates, officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by it or them and arising from any of the following: (i) the Clients breach of the Contract and/or this Agreement or its negligence or other act, omission or default; (ii) the operation or break down of any equipment or software owned or used by the Client but not the Hardware and/or Software; (iii) the Clients use or misuse of the Services; (iv) the Client infringing (whether innocently or knowingly) third party rights (including without limit IPRs).

6. Disclaimer

6.0 The Client acknowledges that the allocation of risk in the Contract reflects the price paid for the Services, Hardware and Software and that it is not within the control of UK Dedicated Servers Limited how or for what purposes they are used. If any exclusion or limit of liability in the Contract is held to be invalid and



UK Dedicated Servers Limited becomes liable for loss or damage that may lawfully be limited then such liability shall be limited to the amount paid by the Client for the Services.

6.1 UK Dedicated Servers Limited shall have no liability to the Client for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the Client or on its behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by the Client or on its behalf.

No action, claim or demand arising out of or in connection with the Contract or this Agreement may be brought by the Client against UK Dedicated Servers Limited more than one year after the cause of action has occurred.

6.2 UK Dedicated Servers Limited is not responsible for any delay, malfunction, non performance and/or other degradation of performance of any of the Services, Hardware or Software caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by the Client whether or not beyond those already supplied.

6.3 Neither UK Dedicated Servers Limited nor anyone else who has been involved in the creation, production or supply of the Services, Hardware or Software shall be liable to the Client or any other person for any loss in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof by reason of or in connection with this Agreement, the Contract or the Services, Hardware or Software for any: (i) economic loss of any kind whatsoever, or (ii) loss of profit, data, business contracts, revenues or anticipated savings, or (iii) damage to the Client's reputation or goodwill, or (iv) loss resulting from any claim made by any third party, or (v) special, indirect or consequential loss or damage of any nature whatsoever, and the Client shall indemnify UK Dedicated Servers Limited from and against any claim which may be made against UK Dedicated Servers Limited in respect thereof. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for consequential or incidental damages and therefore the above may not apply to the Client.