

VIRTUAL SERVER (VPS) WEB HOSTING SUPPLEMENTARY TERMS & CONDITIONS

1. DEFINITIONS

- 1.1 Definitions in the Supplier's Core Terms shall be inherited and therefore apply to words and phrases in these Supplementary Terms;
- 1.2 In these Supplementary Terms, these additional words and phrases have specific meanings:
"Administration" means any work performed by the Supplier on the Virtual Server;
"Administration Plan" means a pre-purchased support package for Virtual Server Administration;
"Control Panel" means the online system through which the Resources are administered by the Customer;
"Operating System" means the master control program (e.g. Windows, FreeBSD etc.) that manages the Server's internal functions and provides a means of control to the Server's operations and file system;
"Plan" means the virtual server hosting plan selected by the Customer upon Application;
"Root Access" means access to the core Operating System or Control Panel with all rights or permissions in all modes;
"Server" means the core computer system that the in which the Virtual Environment is stored;
"Supplementary Terms" means these specific Terms & Conditions;
"Usenet" means a worldwide bulletin board system that can be accessed through the Internet. It contains more than thousands of forums, called newsgroups that cover numerous subjects;
"Virtual Server" means a portion of Server resources allocated to the Customer.

2. SERVICES

- 2.1 The Supplier shall create a Virtual Server dependent on the Plan selected by the Customer during Application.
- 2.2 Once the Virtual Server creation is complete, the Supplier will:
- 2.2.1 Install Software onto the Virtual Server, according to the Plan.
- 2.2.2 Carry out test procedures to ensure that the Server is ready for production.
- 2.2.3 Inform the Customer that the Server is ready for use.
- 2.3 The Supplier shall provide the necessary technical information to allow the Customer to access, connect to and use the Virtual Server.
- 2.4 The Customer is not permitted to physically access the Server on which the Virtual Server is stored, or access the Data Centre in which the Server is stored without express written permission from the Supplier.

3. SUPPORT, MAINTENANCE & SERVICE LEVEL AGREEMENT

- 3.1 The Supplier offers two Virtual Server categories: Full-Serv and Self-Serv. The Customer should select the Virtual Server category they require during the Application. The Customer may change the Virtual Server category that it uses at any time.
- 3.2 For Customers of the Full-Serv Virtual Server category, the following will apply:
- 3.2.1 The Customer will not be entitled to Root Access to the Server.
- 3.2.2 The Supplier shall keep the Server in a reasonable operating condition.
- 3.2.3 The Supplier shall monitor the performance of the Virtual Server, and where possible will endeavour to resolve reductions in performance within a reasonable time frame.
- 3.2.4 The Customer acknowledges that occasional reduction in the performance of the Virtual Server is normal and to be expected due to the unpredictability of usage. The Supplier is therefore not liable for any reduction in performance of the Virtual Server.
- 3.2.5 Occasional required maintenance performed from time to time by the Supplier may affect the availability of the Virtual Server. The Supplier will endeavour to provide as much notice as is possible in all circumstances, subject to procedures required in the event of an emergency.
- 3.2.6 Should the level of availability fall below pre-defined levels, the Supplier shall refund the Customer for any Charges paid for that Monthly period. The refund shall be calculated according to the following:
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|-------|-------------|
| 100% | No Credit |
| 99.9% | 5% Credit |
| 99.5% | 10% Credit |
| 98% | 25% Credit |
| 95% | 100% Credit |
- 3.2.7 The guarantee specified in clause 3.2.6 shall apply only when the following do not apply:
- 3.2.7.1 Circumstances beyond the Supplier's reasonable control, including, without limitation, acts of any

government body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this agreement.

- 3.2.7.2 Failure of access circuits to the Supplier's network, unless such failure is caused by the Supplier.
- 3.2.7.3 Scheduled maintenance, emergency maintenance and upgrades.
- 3.2.7.4 DNS issues outside the direct control of the Supplier.
- 3.2.7.5 Issues with FTP, POP, IMAP, SMTP or Control Panel access.
- 3.2.7.6 Customer's acts or omissions (or acts or omissions of others engaged or authorised by the Customer), including custom scripting or coding (e.g. CGI, Perl, HTML, PHP, and all or any related or equivalent languages/applications), any negligence, wilful misconduct, or use of the Services in breach of any of the Supplier's Terms or Supplementary Terms.
- 3.2.7.7 E-mail or webmail delivery or transmission.
- 3.2.7.8 DNS Propagation, or local DNS caching.
- 3.2.7.9 Technical issues elsewhere on the Internet that hinder access to the Service.

- 3.2.8 The Supplier will guarantee only those areas considered under its direct control, including Servers and network equipment.

3.2.8.1 To receive a refund under these policies, the Customer should contact the Supplier in writing, by fax or by emailing billing@kualo.com. Each request in connection with this Service Level Agreement must include the Customer's helpdesk username, dates and times of Customer Resource unavailability, and must be received by the Supplier by the 10th day of the following said unavailability. In the event of the unavailability being confirmed by the Supplier, credits will be applied to the Customer's account within two billing cycles.

- 3.3 For Customers on the Self-Serv Virtual Server category, the following will apply:

- 3.3.1 The Customer will be entitled to Root Access to the Virtual Server. The Customer acknowledges that such access is granted with the understanding that Root Access permits an individual to make modifications to permissions, folders and files throughout the entire Virtual Server, and that irresponsible use of this access right can lead to server malfunction. The Customer acknowledges that the Supplier cannot be held responsible for any malfunction that may arise as a result of the Customer misusing this access privilege, and that any work undertaken by the Supplier to repair any damage caused will be chargeable at the Suppliers standard hourly rate for Virtual Server Administration.
- 3.3.2 Occasional required maintenance performed from time to time by the Supplier and/or any subcontractors may affect the availability of the Virtual Server. The Supplier will endeavour to provide as much notice as is possible in all circumstances, subject to procedures required in the event of an emergency.
- 3.3.3 The Customer may request the Supplier to assist with Administration tasks as it requires. The Customer acknowledges that it is entitled to up to two hours of Virtual Server Administration per month, as specified in the Plan, and that any work undertaken after this point is chargeable at the Suppliers standard hourly rate for Virtual Server Administration.
- 3.3.4 The Customer acknowledges that any and all Virtual Server Administration is performed only upon request by the Customer, unless otherwise specified in the Plan. Where proactive Virtual Server Administration is included in the Plan, the customer Acknowledges that the Supplier will attempt to resolve any Virtual Server affecting issues as soon as they arise. In resolving any Virtual Server affecting issues, the Supplier will use any remaining Server Administration hours included the Plan. Should the Customer run out of pre-purchased Server Administration hours, the Supplier will not continue to resolve the issue, unless otherwise authorised to charge the Customer for additional Administration hours.

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- 3.3.5 The Customer acknowledges that Administration hours are billable in thirty (30) minute increments.
- 4.3 Subject to the non-appliance of circumstances listed in clause 4.3.1, the Supplier guarantees to replace any faulty hardware within two (2) hours of detection of the fault. Failure to do so will entitle the Customer to a refund of its Charges for that Monthly period. The refund shall be calculated as follows:
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|----------------|-------------|
| 2 – 7 Hours: | 10% Credit |
| 7 – 14 Hours: | 15% Credit |
| 14 – 36 Hours: | 25% Credit |
| Over 36 Hours: | 100% Credit |
- 4.3.1 Circumstances beyond the Supplier's reasonable control, including, without limitation, acts of any government body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this agreement.
- 5. ACCEPTABLE USE POLICY**
- 5.1 The Customer agrees to:
- 5.1.1 Immediately notify the Supplier upon awareness of any unauthorised use of the Virtual Server.
- 5.1.2 Not use the Virtual Server, or allow others to do so, for any unlawful activity or activity that in the opinion of the Supplier may bring harm to the Supplier or bring the Supplier into disrepute, including the storage of:
- 5.1.2.1 Material that infringes any rights (including Intellectual Property Rights) of any third party.
- 5.1.2.2 Material the Supplier may judge to be threatening or obscene.
- 5.1.2.3 Material that encourages criminal acts.
- 5.1.2.4 Pornography or sex-related merchandising, including sites that infer sexual content.
- 5.1.2.5 Material containing any virus, worm or other harmful code.
- 5.1.2.6 Pirated software or files.
- 5.1.2.7 Links to, frames or any other means of displaying or connecting to any items listed in Clauses 5.1.2.1 to 5.1.2.6.
- 5.1.3 Not install any IRC Egg Drops & related programs.
- 5.2 The Customer accepts full responsibility and liability for all activities conducted using the Virtual Server.
- 5.3 The Supplier is committed to a zero-tolerance anti-spamming policy. Under this policy, the Supplier prohibits the sending of spam or any unsolicited email, being sent either:
- 5.3.1 Over the Supplier's network.
- 5.3.2 Over any network if the email advertises or mentions in any way a site hosted on the Supplier's network.
- 5.4 In addition to the sending of bulk email, the Supplier prohibits the Customer from cross-posting messages to a large number of Usenet newsgroups or website forums, and/or posting obscene or threatening messages whilst using or referring to an email address or website URL hosted on the Supplier's network.
- 5.5 The Supplier will be the sole arbitrator of what constitutes a violation of these policies, and the Customer acknowledges that its Service may be suspended or cancelled in the event of a violation or suspected violation of these policies.
- 5.6 Accounts cancelled due to violation of any of these policies may be liable, at the Supplier's sole discretion, to an administration fee not to exceed £500.00 Sterling.