

GANDI HOSTING GENERAL CONDITIONS

Version 3.0 dated January 17th, 2012

You acknowledge that the subscription to and use of Our Gandi Hosting services implies the acceptance of and adherence to, without reservation or restriction, Gandi's General Service Terms and Conditions, these General Hosting Conditions, all applicable special conditions for the use of accessory services that You may have subscribed to, rates and conditions and technical limitations of Our services, as outlined on Our website at <http://www.gandi.net> (hereafter referred to as "Our Contracts" or "Gandi's Hosting Contract" of the "Present Contract").

Our Contracts are freely available for viewing on Our website, and they are also presented to You at the time of the subscription of a service, in accordance with the contractual process described in Gandi's General Service Terms and Conditions.

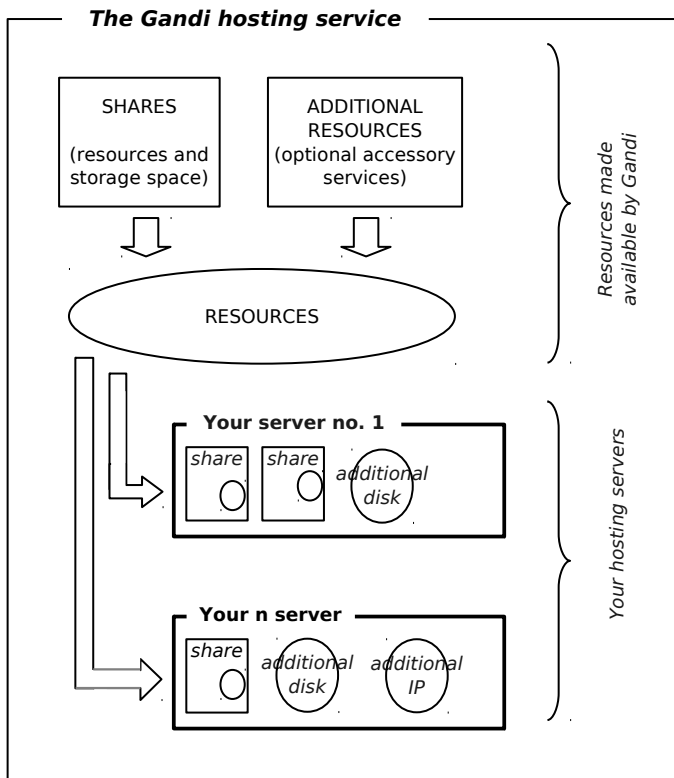
You acknowledge that You have read and accepted them, and to abide by them without condition or reservation.

Capitalized terms in used in Gandi's Hosting Contact are defined in Gandi's General Service Terms and Conditions, except for those that are defined in the present Hosting Contact.

The present Hosting Contract, which determines the services provided by Gandi within the framework of its hosting solutions and obligations as determined by the services subscribed to, complements Gandi's General Service Conditions whose clauses will receive full and entire application, unless stated otherwise in the present Hosting Contract.

Article 1. Description of the services:

1.1. The IaaS service



Gandi provides its hosting solutions, within the context of the Present Contract, via a technical infrastructure permanently linked to the Internet. This infrastructure is divided into equal shares. A share is a bundle of resources (RAM, processor power, bandwidth, disk space) made available to You, so that You can create one or more hosting servers (*mail, web, VOIP, etc.*), and

manage them in an autonomous manner, via Your Gandi handle through Gandi's interface (hereinafter referred to as the "Gandi Hosting" service).

The technical limits and characteristics of Gandi's Hosting services, and the optional additional resources that are also provided, as well as all the corresponding prices and any special conditions, are detailed and made available for viewing on Our website at <http://www.gandi.net> so that You can gain awareness of them before subscribing to one of Our services.

You choose the number of shares that meet Your needs, and You can subsequently increase or decrease resources (RAM, processor power, bandwidth, disk space) that constitute Your server (except for disk space, which cannot be reduced), in total autonomy and at any time via Your secure management and administration interface through Your Access Codes, in accordance with the contractual process described in Gandi's General Service Terms and Conditions.

As an example, with resources that constitute one share You can run a traditional web server, a data storage server, or a TeamSpeak server (chat system enabling several persons to chat over the Internet, for example during an online game).

Each server that is created with the resources You have chosen will have a fixed IP address, so that server can be identified on the Internet.

1.2. The PaaS service

Gandi offers You a PaaS (Platform as a Service) service, that will let You host Your services on a dedicated Instance that is configured and optimized by Gandi. You may, at any time, choose the power of Your Instance. You can also resize Your disk depending on Your needs.

Article 2. Gandhi's commitments

In addition to the contractual obligations described in Gandhi's General Service Terms and Conditions, and Your strict adherence to Your obligations and the conditions and technical limitations specific to each of Gandhi's Hosting Services, as a technical intermediary providing hosting services, Gandhi commits to:

- providing You with the hosting service You choose (within the limits that are detailed on Our website), immediately after validation of Your payment and within two hours at the latest, on the condition that the necessary resources would be available for the period chosen and at the time of Your order,
- providing You with hosting solutions that are based on technology and a processing system that allows You to benefit from competitive rates,
- making best efforts to assure a continual service uptime of 99.95% per day, with the exception of downtime caused by maintenance scheduled by Gandhi, in the event of a force majeure, an event that is beyond Our control or that is fortuitous, any problem relating to payment that was caused by You or the banks, or related to the software side of the service (as it is largely dependent of users and the specific configuration that they put in place),
- **refund You in the form of credit to Your Gandhi Prepaid Account for any downtime of the service not covered by these commitments that You may have informed Us of, and which is linked to a problem with Our technical infrastructure (machines and Gandhi network), on the basis of a full day, even if the downtime only lasted a few minutes,**
- intervening rapidly in the event of a hardware or network failure at Gandhi, in order to restore the service, where possible within six hours of the incident being reported to Gandhi.

The limits of Our obligations and Our responsibility, and the conditions under which We may take action on Your Account and/or server(s) or Instance(s), are detailed hereafter, in addition to Gandhi's General Service Terms and Conditions.

Article 3. Your specific obligations as part of Gandhi's Hosting Service

You acknowledge and accept that Your obligations listed in Gandhi's General Service Terms and Conditions will be in full force, no matter what service You may have subscribed to (Article 3 of Gandhi's General Service Terms and Conditions).

Consequently, You commit Yourself to choosing a service that meets Your needs, or those of Your Administrators or Users, to abide by and to assure adherence to the technical specifications and limitations of Our services, to assure that the use of Our services is done within the limits of the law, and in accordance with Our Ethical standards, and to identify Yourself with Our services.

Additionally, in accepting the present Contract and by using Gandhi's Hosting Services, You must constantly guarantee adherence to the the specific obligations below.

3.1. Specific obligation of identification

As a reminder, You are required to identify Yourself as per Our contractual agreements (*specifically Articles 3.4 and 4 in Gandhi's General Service Terms and Conditions*)

In accordance with Our Contracts (Article 3 of Gandhi's General Service Terms and Conditions), You take it upon Yourself to assure the strict compliance to obligations that are incurred to You due to Your activity, professional or not, and/or Your status (regulated activity, for example), in such a way that Gandhi is never bothered in this regard.

Specifically, We call Your attention to the fact that, in accordance with applicable law, specifically the French law, You must clearly be identifiable to third parties in Your function as a web host, if You use Our services to host public communication services on line (notably websites or blogs) whether or not You are an editor of these services.

You must also in this situation, provide the technical means to any person editing these services to satisfy the identification conditions outlined in French law.

According to current applicable laws, the following information must be made available to the public, in an open standard, by anyone whose activity is to publish a public online communication service:

- **for an individual:** his/her first and last name, street address and telephone number,
- **for an organization:** the name of the business or organization, the address of its headquarters, its telephone number, and its registration number,
- the name of the **director or co-director of the publication** is, if applicable, that of the editor in chief,
- the name, address, and telephone number **of the hosting provider**, it being noted that this contact information must correspond to Your contact information as a customer of Our services. In other words, those that You submitted to Us during the creation of Your Gandhi handle during Your subscription to Our hosting service.

If the public online communication service is not published for professional purposes, the person that publishes this service can choose to remain anonymous, by only providing the name and address of the hosting provider (You) though dependent on You having provided the aforementioned information, which is covered by professional secrecy.

Within the framework of the IaaS service, each server that You create via Our Hosting Service corresponds to a static IP address that will allow for the server to be identified on the internet.

In compliance with laws and legislation in force in France, if We are required, We will communicate, in Our function as a hosting provider, the contact information in Our possession that

corresponds to the Gandi handle that was used to subscribe to the service.

You acknowledge and accept that, in accordance with Our Contracts, and under sanctions mentioned therein:

- the information that You provide to Gandi as part of Your Legal obligation to identify Yourself must always be exact, complete, reliable, and up to date (*if necessary, You must send Us all proofs of ID upon Our request and within the deadline We provide in Our request*),
- activation of the Private Domain Registration service and/or the Gandi Anti-Spam option, as per Our Private Domain Registration Contract (annex 1 of Terms and conditions of domain name registration at Gandi), does not in any way release You from Your legal obligation to identify Yourself, and You must also not substitute Our contact information for Yours in this context,
- if We are informed or learn that the information that You have provided to Us is erroneous, outdated, or incomplete, We will inform You of this breach of Your obligations and ask that You correct the situation.

3.2. Obligation to intervene on Content

You agree to use Our services in a strictly legal way, and in conformity with Your contractual obligations and the technical aspects and characteristics of Our services.

You are completely responsible, including in the event that You resell Our services, or grant a license to use to a third party, whether professional or not.

In accordance with Your obligation to guarantee, in permanence, that Our services are being used in a legal manner, and in conformity with Our Ethical standards, Gandi's General Service Terms and Conditions (Article 3), You agree to promptly act, particularly upon receipt of any notification from a third party claiming to have been wronged and mentioning Content present on all or part of Your servers or Instances, notably a notification that would be addressed to You, directly or indirectly, in accordance with the French law regarding trust in the digital economy, to delete litigious content or to render its access impossible, or to take all necessary action to satisfy the conditions of the notification, in such a way that Gandi is never bothered in any way.

You notably guarantee that:

- if You publish a public online communication service, You will immediately supply, at the first request, in the event of a dispute or complaint from any third party, all necessary evidence that demonstrates that You have a greater rights to the content than the person who filed the complaint, and to not publish, directly or indirectly, any part or whole of any content that may have already been considered or judged as being illegal or prejudicial by any competent authority and to delete it automatically or immediately following the first request to do so as soon as You are informed of its presence,

- in all cases, You will act promptly in the event that You receive a complaint from a third party concerning any or all Content that You host through Our Gandi Hosting services, in such a way as to put an end to the alleged problem without delay, and to comply with Your obligation to respect the rights of the third party and to abide by applicable French laws.

You specifically acknowledge and agree that:

- in the event of a license of use, and notably if You host services for third parties on Your servers or Instances, You must make sure that they act promptly on their content. By default, and in all cases, **it is Your full and sole responsibility to intervene on Your content**,
- any intervention made by Gandi on Your behalf can only be done at the level of one or more of Your servers or Instances, on Your Gandi Hosting Account, and such intervention can affect all the servers or Instances and services associated to Your Hosting Account, **without any distinction**.

Consequently, in order to avoid the suspension or deletion of Gandi's hosting service, You must take all necessary measures to assure that You are abiding by Our Contracts and all applicable French laws in force. You must quickly and personally intervene, to put an end to any illicit or prejudicial use of Our service that is under Your full and sole responsibility, and to clearly identify Yourself within the framework of Your activity and within the framework of the IaaS service, to assure that all administrators or users of Your servers do likewise.

In any event, it is a violation of the present article and a serious breach of Your contractual obligations if You do not intervene on Your server or Instance. Such non-intervention may lead to Your liability with regards to Gandi, notably if We are blamed in Your place, without prejudice to Your responsibility with regards to third parties, in conformity with applicable French law.

You shall indemnify and guarantee Gandi of any and all consequences We may suffer due to Your use of Our services, or associated to any of Your Contents. This obligation will survive the termination of this Contract.

You specifically guarantee Gandi against all and any action or claims from third parties linked to the Content installed, issued, published, transmitted, broadcast or reproduced through Your servers or Instances, in particular that which results from infringement of personality rights, an ownership right linked to a patent, a trademark, designs and models, copyright, respect of privacy, good moral standards, from the provisions of the French Penal Code, and/or to abuses or practices that are prejudicial to Internet users, whether the said Content was installed by You or by a third party.

You also agree to find a rapid solution to each problem or dispute which may arise with regards to Your use of Our services and, where applicable, to rapidly communicate the identity of any third party which has a license or right to use and/or manage the services operated via Our technical solutions.

3.3. Obligation to backup Your data

Our service only consists of providing You with technological hosting solutions during the term of this Contract, and does not include the backup of Your Content and/or technical settings, even though We have provided You with several tools with which You can do this.

To help You build a backup architecture that is adapted to Your needs, We provide You with various optional tools (for example the "disk repulsion", and "backup disk" services), which are described and presented on Our website, which You can choose to use or not.

Additionally, in the event of the cancellation of service, for whatever cause, or if Your subscription has ended, Gandi will delete all the data associated with Your corresponding server(s) or Instance(s).

You must therefore backup and recover Your contents before the expiration of Your service, or before You change providers, as well as on a regular basis throughout the duration of Your subscription, as indicated in Our Contracts.

In this respect, note that when a service expires, in order to give You the possibility of late renewal, Your server or Instance is only deactivated, and will only be deleted fifteen (15) days after expiration. You can therefore proceed with a late renewal of the service within the fifteen (15) calendar days that follow the expiration date, unless You have voluntarily cancelled Your subscription, before the expiration date, of the service in question.

The backing up of Your content and technical settings shall be Your sole responsibility. You must take all the necessary steps to ensure regular backups and protection of Your Content and all Your data and configurations, as well as their updates, on media outside Gandi.

3.4. Obligation to preserve the reputation of the IP address of Your server

Within the framework of the IaaS service, You commit to preserving, for the entire duration of the present Contract, the reputation of the IP address associated to Your server.

Notably, it is Your obligation to assure that this IP Address is not listed on one or more blacklists, whichever ones they may be (for example <http://www.spamhaus.org/>, "XBL", or "SBL") and, if necessary, to take all necessary actions to remove the IP address or addresses that are listed, without delay, and to guarantee Gandi with regards to this.

Article 4. Rates, Means of Payment - Billing

You agree to pay Your order in accordance with the rates and terms and conditions in force at the time of Your order, in the contractual process as outlined in Gandi's General Service Terms and Conditions.

As a reminder, when You accept Gandi's General Service Terms and Conditions, You commit Yourself to respecting Gandi's Prepaid Account Contract and its operating procedures (Annex 1 of Gandi's General Service Terms and Conditions), which is an integral part of Our Contracts.

This payment system will allow You to easily modify the services that You have subscribed to within Gandi's Hosting service at any time.

It also lets Gandi easily proceed with refunds if necessary, depending on the service and options that may have been subscribed to or cancelled.

Upon the subscription to the Gandi hosting service, You commit to paying the price for the service and the options that You have subscribed to, for the duration that You have chosen and in conformity with Article 8 hereafter.

In the event of a cancellation of an option and/or modification (ex. if You remove shares or resources) during their subscription period, You will be refunded to Your Gandi Prepaid Account for the time that remains in the subscription period between the time You cancel the service and the end of the subscription period.

In accordance with Gandi's General Service Terms and Conditions, We will only be contractually bound, and You may not benefit from the service ordered, until We have received and validated Your full payment.

Article 5. Activation of the Gandi Hosting service

Service activation corresponds to the effective provisioning of the hosting services **ordered and fully paid for**.

Upon the completion of the contractual process, in conformity with Gandi's General Service Terms and Conditions, We will email You a notification of activation at the email address associated with Your Gandi Account.

For example, the activation of the service, subject to the reception and validation of Your complete payment for the services and options subscribed to, is completed on average within one hour of the subscription via Our website, it being noted that this time frame depends on the choices made.

Consequently, in conformity to Gandi's General Service Terms and Conditions, and the French Consumer Code, You acknowledge and accept that the cancellation right does not apply if Gandi's hosting service is activated before a period of seven clear days, as stated in the French Consumer Code.

Article 6. Your Gandi Hosting management and administration interface

In conformity with Gandi's General Service Terms and Conditions, Your secure management and administration interface will allow You to manage Your Gandi Account and

associated Gandi Hosting services that are associated with it, autonomously, when You log in with Your Access Codes.

The subscription to Gandi's Hosting service and to any associated service is done in accordance with the contractual process described in Gandi's General Service Terms and Conditions via Your secure management and administration interface.

This interface notably allows You, in total autonomy, and under Your full responsibility:

- to subscribe, to modify, and/or to cancel Gandi Hosting services and options to a more or less powerful plan, throughout the duration of the Contract.
- to manage Your Hosting server or Instance (and notably publish online, delete, or modify all or some of the content on Your server or Instance),
- to modify and update Your contact information associated with Gandi's Hosting service,
- to change the password(s) associated with all or some of the Administrators or Users that You may have designated,
- within the framework of the IaaS service, to proceed with the technical configuration of all or some of Your servers, as indicated hereafter.

Article 7. Your access codes and administrator access are under Your responsibility and guarantee

As a reminder, in accordance with Our Contracts, Your Access Codes, which are private, are under Your full and complete responsibility.

Additionally, and in conformity with Gandi's General Service Terms and Conditions, within the framework of the IaaS service, and depending on the service chosen, You may associate Your server to one or several "administrators" so that they will be able to connect to the server in question, via a password that has been attributed to them (completely separate from Your own Gandi Access Codes).

As a reminder, in accordance with Our Contracts:

- the issuing of such authorization is made at Your own risk, since You remain, with regards to Gandi, fully and entirely responsible for all activity and content on Your servers or Instances,
- it is Your obligation to ensure that passwords chosen offer a sufficient level of security (number and type of characters),
- Gandi does not manage accounts and passwords of Administrators, which are under Your full and entire responsibility. Gandi can also not intervene, notably in the event of a loss or theft of the password of an administrator's and/or root account. It is therefore Your personal obligation to take all measures necessary to modify or delete access that have been attributed to a specific administrator in the event of the loss or theft of his account.

Article 8. Duration - End of Contract

8.1. Duration

The Gandi Hosting Contract shall take effect beginning from the moment of the service's activation, which is dependent on the full prior payment (payment received and validated) of the ordered services.

Upon Your Account's activation, You can take advantage of Our services and resources for the duration that You have chosen.

Our Gandi Hosting offer is very flexible: You can use the resources of the Gandi Hosting offer for one or several days, one month, one year; You can even add additional resources for a few hours.

You can schedule, according to Your needs, the activation and deactivation of all or part of the resources associated with Your Gandi Hosting Account.

Whether it is a first order or a renewal of a service, You decide the term during which You intend to use the service (monthly offer without commitment, or an annual offer) via Your secure management and administration interface.

You can opt to move from the monthly offer to the annual offer during the term of the agreement, without any service interruption. The remaining period of time of Your first subscription shall be then refunded on Your Prepaid Account. On the other hand, You cannot go from an annual subscription to a monthly subscription during the subscription period; this is only possible when it is time to renew the service, at the end of the annual period.

Within the framework of the IaaS service, if the number of shares that You need changes throughout the year, You may also combine the two offers to optimize Your budget, by adding and removing monthly shares as You wish to Your fixed annual share(s).

8.1.1. The monthly offer, without commitment (daily invoicing)

With this offer, the service is initially subscribed to and paid for a minimum one-month period. This being said, You can terminate the service at any time, as mentioned below, upon the first day, and effective immediately.

The service is invoiced on a daily basis. Your Gandi Prepaid Account will be credited for the amount corresponding to the remaining period of time.

You will therefore only pay for the services subscribed to from the day You subscribed to them until their deactivation.

The refund is made immediately to Your Gandi Prepaid Account, and can be used to pay for other services at Gandi, or can be refunded, according to the conditions set forth in Annex 1 of

Gandi's General Service Terms and Conditions relative to the "Gandi Prepaid Account", and in this present Contract.

8.1.2. The annual offer, with commitment (yearly invoicing)

As part of this offer:

- the duration of Gandi's Hosting Contract is twelve (12) months, which may be renewed, but can not become a Contract of unlimited duration,
- Your commitment of twelve (12) months allows You to benefit from a lower rate,
- at the end of the annual period, You can renew for an identical period, or switch to the monthly service.

If You do not renew or subscribe to the monthly service, the service will be terminated upon its expiration date. Additionally, You can always terminate the Contract before the end of the annual expiration date if desired, however this cancellation will not result in any refund.

8.1.3. The "Gandi Flex" optional service (hourly basis)

Within the framework of the IaaS service, in addition to the above offers, We also offer a service called "Gandi Flex", which enables You, once You have subscribed to the monthly offer or to the annual offer, to add resources for only a few hours on a server, according to a schedule that You decide.

For example, You can schedule the addition of a supplemental share each Monday between 9 and 10 AM, if You know that Your server needs more resources within that period each week.

Additional information on this offer is also published on Our website.

8.2. End of Contract

The services subscribed to terminate upon the expiration date of the period subscribed to and paid for, in the following cases:

- if, at the end of the period, You do not renew the service, or if Your complete payment has not yet been received and validated within the necessary deadline,
- if You did not credit Your Gandi Prepaid Account for enough credit to cover the complete cost of the service or services that required renewal.

At the expiration date, We proceed with the deletion of the servers or Instances with a fifteen (15) calendar day suspension period during which all the servers or Instances and technical services that may be associated with these expired servers or Instances will be deactivated. It is possible to renew Your services at the regular rate during this period. If this renewal is not performed within this period, the server(s) or Instance(s), as well as all resources and content that is associated to them will be permanently deleted.

The Gandi Hosting Contract and services that You have subscribed to also terminate if You cancel them before the end of their scheduled expiration date (see the article below), or in the case that they were terminated by Gandi, in the conditions outlined below.

Article 9. Renewal

9.1. Express renewal (by default)

In conformity with Gandi's General Service Terms and Conditions, the renewal of a Gandi Hosting service is not automatic.

It must be expressly requested by You from Your secure management and administration interface, after logging in with Your Access Codes.

To take effect, the renewal of the service requires the complete payment (reception and validation) of the service(s) renewed, at least:

- one day prior to the end of the period, under Our monthly offer,
- one month prior to the end of the period, under Our annual offer.

If these deadlines are not met, the renewal without a disruption in service cannot be guaranteed. We strongly recommend that You renew the service well in advance, and take into consideration the means of payment chosen to credit Your Gandi Prepaid Account, and this, to avoid any disruption in service upon expiration.

9.2. Tacit renewal (optional)

You may activate the automatic renewal option if You wish. This option is available on Our Interface via Your secure management and administration interface once You log in with Your Access Codes.

To take effect, the activation or deactivation of this option must be made:

- one day prior to the end of the period, under Our monthly offer,
- at least one month prior to the end of the period, under Our annual offer.

In addition, the renewal of the service depends on the complete (received and validated) payment of the service renewed within the deadlines mentioned above.

If these deadlines are not met, the renewal without a disruption in service, cannot be guaranteed. We strongly recommend that You renew the service well in advance, and take into consideration the means of payment chosen to credit Your Gandi Prepaid Account, and this, to avoid any disruption in service upon expiration.

Article 10. Your right to early termination

You can remove all or some of the services or optional resources

that are associated to Your Gandhi Hosting Account, included during the term.

Under Our annual offer, early termination does not give right to any credit or refund.

Under Our monthly offer without commitment, in case of early termination, Your Prepaid Account shall be refunded for the amount corresponding to the remaining unused time (*prorata*), from the termination day until the end of the initially-subscribed period.

You will receive Our Notification, which will specify which service was terminated, the link to the interface stating Your Gandhi Prepaid Account balance, and the conditions to get a refund of the remaining balance on Your Gandhi Prepaid Account if desired.

In consideration of the large freedom that is, if relevant, offered with this early termination process, which is possible even prior to the end of the initial subscribed period in some of Our offers, You agree not to use this right in an unreasonable manner.

Article 11. Suspension/Termination by Gandhi

11.1. Suspension/Termination with notice

Any failure to abide by Your contractual obligations, which have not been corrected within fifteen (15) days of receiving Our Notification to do so, shall lead to cancellation of the Contract and the associated services, with no legal formalities and without You being entitled to any reimbursement or compensation, regardless of the contractual period underway to which this termination will apply.

11.2. Suspension/Cancellation without notice in the case of serious breach of Contract

You acknowledge that, in the framework of Gandhi's Hosting service, the following elements shall be considered a serious breach of Your obligations, though Gandhi does not have any obligation to monitor Your activity, and assumes no liability as a result of Your content:

- all serious breach of Contract as defined in Our Contracts, and notably any use of Gandhi's Hosting service, directly or indirectly, that is in violation Your obligations as outlined in Gandhi's General Service Terms and Conditions (Article 3), Gandhi's General Terms and Conditions of Domain Name Registration (Article 3) and any special conditions that are applicable to Your domain name's extension, and which will be defined as a serious breach of Contract,
- any violation or default in Your specific obligation to intervene in the contents of Your server or Instance, in application of Article 3.2 of the present Contract,
- in the framework of the IaaS service, any violation or default in Your obligation to preserve the reputation of the IP address associated with Your server, in application of Article 3.4 of the present Contract.

In accordance with Our Contracts, We remind You that:

- any serious breach of Your obligations is grounds for the suspension/deactivation or even deletion of Gandhi's Hosting service, Your server or Instance, and/or Your Gandhi Account, without any formality or notice,
- Gandhi can not, therefore, be held responsible for the direct or indirect consequences connected with the suspension, deactivation, or deletion of Gandhi's Hosting service, and consequently, Your server or Instance and/or Gandhi Account,
- consequently, You shall not be entitled to claim any compensation or refund, and You could be required to pay damages in the case of prejudice, in addition to application of the penalties prescribed by legislation in force in France, and Our Contracts.

11.3. If Gandhi is constrained by law

You accept that, in accordance with the laws and regulations in France, and Our Contracts, We may proceed with the immediate suspension or deletion of all or part of the services You have subscribed to and/or Your servers or Instances and/or Your Gandhi Account without notice, and consequently, any additional service associated to Your Gandhi Account:

- to meet a legal or regulatory obligation, or in application of the rules that govern Our activity as a technical intermediary, or,
- when ordered by a competent authority (in particular through application of a judicial or extra-judicial decision),
- if We receive a notification in conformity with the French law, concerning all or part of Your website or its contents, in the framework of the hosting service subscribed to.

We also reserve the right to suspend Your server or Instance if it is under a DDoS attack, which may disturb the well-functioning of the platform.

Note that in all the cases described in the present Article 11 (11.1, 11.2, and 11.3), termination by Gandhi results in the permanent deletion of Your servers or Instances and any content that they may contain. Our intervention can technically only occur on a server or Instance as a whole, and not on any specific content, what it may be.

Additionally, You accept and agree that Gandhi cannot be held liable for any interventions that have been taken as part of the present Article 11, and You can not claim any indemnity or refund, regardless of the contractual period underway during which this termination by Gandhi may have occurred.

Additionally, You may be required to pay damages or interest in the case of prejudice, in addition to application of the penalties prescribed by legislation in force in France.

Article 12. Technical interventions by Gandhi

Gandhi intervenes, in its role as a technical services provider, for the purpose of ensuring the proper operation of its services, the safety and stability of the system.

In that respect, Gandi may intervene under the following circumstances:

- to provide services included in the subscribed offer (for example, in connection with the “Gandi Auto Install” offer),
- to stop a technical malfunction inherent to Our system,
- to carry out a maintenance operation,
- in case of trouble affecting the safety and/or the stability of the system: abusive use and/or illegal use of Your server or Instance without Your rapid reaction by Yourself or following a warning from Our service (ex: spamming, fraud, hacking, unauthorized access attempts...); obvious damage to, or attempt to damage Our infrastructure caused by Your server or Instance (DDoS, botnet, spamming, ...),
- as part of Our customer service, with Your consent, and if Our intervention turns out to be necessary.

These interventions, and notably scheduled maintenance, are excluded from Our service level agreement, as outlined in the beginning of the Contract (Article 2). Consequently, any downtime that may result are not grounds for a refund or crediting of Your Gandi Prepaid Account.

This access is intended to facilitate the prompt resolution of certain legal and/or technical problems.

You have subscribed to the “Gandi Expert” IaaS service, You will then have to carry out the technical interventions on Your server in order to assure it's proper functioning by Yourself, including in case of malfunction or failure, whatever its cause or origin.

In all event, Gandi reserves the possibility of, if it is absolutely necessary, to interrupt some or all of the service in order to perform a technical intervention, particularly in the case of defective operation, or to improve the operation, or to perform any maintenance operation.

We shall do everything necessary to limit the time of the said interruption as much as possible and, if possible, We shall give You reasonable prior notice, indicating the date, the type and the duration of the intervention, so that You can make all the necessary arrangements.

However, You acknowledge that We will not be able to give You prior notice in the case where the service interruption is due to an external reason (in particular, one that would be inherent to Internet itself) or if it is explicitly requested by a competent authority or in application of current French law.

Article 13. Technical settings - hardware and software security

Gandi agrees to make every effort to ensure the security of its hardware and its technical infrastructure.

However, You acknowledge and accept that the software security of each of Your servers or Instances shall be Your sole responsibility. Notably, You agree to take all the steps necessary to secure the access to Your servers or Instances, and of Your

Access Codes and passwords, as with every website or service put in place via the subscription to Gandi's Hosting service.

You agree that You are fully responsible for:

- the configuration of Your servers or Instances to meet Your particular needs and objectives,
- the application of solutions that are appropriate to secure and/or restrict all or some access to Your servers or Instances, content, websites, or applications that You are hosting.

It is also Your sole and entire responsibility to maintain and update software, notably security software, pertaining to Your server(s) or Instance(s) or their backup, or to all website or service that has been put in place through Your subscription to Gandi's Hosting service.

Under no circumstances may Gandi be held responsible for security flaws and damage resulting from Your failure to update the security software and maintain suitable security protocols in the administration of Your server(s) or Instance(s).

You agree to inform Gandi immediately of any security flaw or any abusive use of Your servers or Instances, regardless of the type, which comes to Your knowledge, so that We can coordinate Our efforts if necessary.

In addition, We reserve the right to suspend, or even delete Your server(s) or Instance(s) or Our services and associates resources without prior notice in the case of a security flaw originating from Your servers or Instances.

In order to ensure the continual access of its services, Gandi shall duplicate Your data and the information hosted on Your server or Instance.

However, You acknowledge that the use of this solution does not constitute a contractual guarantee and, under no circumstances, does it relieve You from performing regular backups of Your data and Your configurations on a medium outside Gandi.

Finally, You commit Yourself to cooperating with any administrative or legal request concerning all or part of Our services, including on Your servers or Instances.

Article 14. Exclusions and limits of GANDI's liability

In addition to the exclusions and limitations of responsibility as outlined in Gandi's General Service Terms and Conditions, within the context of Gandi's Hosting Service, We shall not accept any liability due to:

- difficulties in accessing Your websites, Content or services hosted, due to saturation of the networks at certain periods, and/or due to the technical characteristics and limits of the Internet and access to the Internet, which You declare You are well aware of, and therefore We cannot be held responsible for this in any way whatsoever,

- difficulties or operating defects that are due to the type of Content that You install or make available via Your server(s) or Instance(s) under Your sole responsibility,
- any deterioration due to Your fault and/or Your failure to respect the conditions and technical limits applicable to each of Our services,
- the misappropriation, the total or partial destruction of the information transmitted or stored, notably from the moment that said information circulates via the Internet, and even less so when said destruction is due to the fault, imprudence and/or negligence that is attributable directly or indirectly to You,
- any contamination by virus or other computer contaminant, regardless of the technology used, of Your Content and/or software, whose protection is under Your responsibility,
- any intrusion by third parties of one or more of Your server(s) or Instance(s), despite the reasonable measures introduced by Gandi on its infrastructures, and from the moment that, by express agreement between the parties, the security of Your servers or Instances remains under Your responsibility.
- within the framework of the IaaS service, the listing of one of Your IP Address(es) associated to Your server(s), in a blacklist, within the framework of Gandi's Hosting service.

Within the framework of the IaaS service in order to prevent any abusive use or access of Your server(s) by a third party, We strongly recommend that You configure Your server appropriately, use at least a firewall where applicable, and monitor unusual transmissions of Your server(s) (for example by installing a monitoring system).

In addition, You acknowledge that You were informed that the applications and/or nature of Content made available via Your servers or Instances are liable to interfere with the accessibility and operation of Your servers or Instances, and any websites that might be hosted on them. We shall not accept any liability for this situation.

You acknowledge that Gandi is not subject to any general obligation to monitor the Contents or applications transmitted or stored through Gandi. Although Gandi reserves the right to proceed with verifications, We have no obligation to perform any active search for incidents or circumstances involving illegal or prejudicial activities.

In any event, in the case where the responsibility of Gandi would be demonstrated, You cannot claim any indemnification greater than the amount which has been paid to Gandi in return for the concerned service and corresponding to the actual unavailability/dysfunction period for this service.

Article 15. Reselling Our services

You are authorized to resell Our Gandi Hosting services as long as You respect all Our Contracts, all legislation in force, specifically of France, and as long as You ensure that Your clients also respect the legislation in force and the rights of third parties.

By reselling Our services, You agree to offer Your clients the same level of service quality as provided by Gandi, and to respect the same ethical standards (as defined in Our Contracts).

In this respect, You agree to pass on to Your own clients at least the obligations stated in Gandi's General Service Terms and Conditions and the present Gandi Hosting Contract and, more particularly, You agree to ensure that Your clients respect all the obligations stated in this present Contract.

In addition, You agree to uphold all obligations and responsibilities set forth in Gandi's General Service Terms and Conditions at Your expense, with regards to Your clients and/or third parties, in addition to those incumbent on web hosting companies, according to the legislation in force, particularly in France.

You agree to act in a way which ensures that Gandi is never bothered due to Your activities and/or Your use of Our services, whether professional or not, including as a reseller.

Particularly, You agree to assure that, before any reselling of Our services, that Your customer does not directly or indirectly participate in spamming activities that is listed in the "Spamhaus" registry (*Spamhaus Register of Known Spam Operations – ROKSO*, which may be freely viewed at <http://www.spamhaus.org>), and/or is not listed and shall vouch for You customer.

You explicitly agree to defend and hold harmless Gandi to any prejudice or any sentence that should result, either directly or indirectly, from Your activities and Your use of Our services, or the use of third parties through Your intermediary. This obligation shall survive the termination of the Contract.

Specifically, You agree to insure Your activity in order to cover all damage that it may incur, and to be able to efficiently guarantee Your commitments with regards to Gandi.

Article 16. Contract modification

In accordance with Gandi's General Service Terms and Conditions, and applicable clauses, the present Gandi Hosting Contract may be modified notably in order to take in to Account any changes in legal or technical jurisprudence.

Article 17. General provisions

The preamble is an integral part of the present Contract.

Our tolerance, if any, of a breach of Contract on Your part, can not be considered as a waiver of Our right to invoke such breach.

In the event of any stipulation of the Contract being declared void or non-enforceable by a competent court, it shall be declared unwritten, and will not lead to the cancellation of other stipulations, which shall remain in force to their full extent.

In compliance with the French Civil Code regarding the relative effect of contracts, this Contract shall only have effects between the contracting parties, and may not be invoked by third parties.

Article 18. Applicable law - jurisdiction

This Contract is governed by French law with regards the rules of both form and substance.

Only the text of the French version of this Contract shall govern in the event of a dispute of interpretation of the present Contract.

The parties should endeavor to settle any dispute concerning the validity, interpretation or execution of this Contract on an amicable basis.

You agree that You have been informed and expressly accept that if no amicable solution is found, in accordance with current French law that applies to Us, and unless there exists a clause to the contrary, any dispute concerning the validity, interpretation or execution of this Contract shall be referred exclusively to Gandi SAS (Paris).

In addition, You acknowledge and accept that You may appeal, notably in the framework of claims under guarantee; under any other jurisdiction for which the procedure may have been filed by or against a third party.

- end of the Gandi Hosting general conditions-

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