

GANDI INFRASTRUCTURE (IAAS) HOSTING CONTRACT (VPS CLOUD)

Last Updated August 1, 2014 – Version 1.0

This Gandi VPS Cloud Hosting Contract (“Gandi VPS Cloud Hosting Contract” or “Agreement”) constitutes a binding agreement between Gandi US, Inc., a Delaware corporation (“Gandi”, “we”, “our”, or “us”), and any person or entity registering as a user and electing to purchase, activate, subscribe to or renew our Gandi VPS Cloud Hosting Service through the online portal available at www.gandi.net (your “Gandi Account”) or any person or entity with access to your Gandi Account (“Customer”, “you”, or “your”). By using our services, you agree at all times during your use to abide by this Gandi VPS Cloud Hosting Contract and any additions or amendments. Please read this Agreement carefully.

This is just one of a number of agreements that govern our relationship. This Agreement is a supplement to Gandi's General Service Conditions, Gandi's pricing information, Gandi's Privacy Policy and the respective contractual conditions applicable to any other services offered by Gandi that you purchase, activate, subscribe to, or renew via your Gandi Account (collectively, the “Gandi Contracts”). The Gandi Contracts may be viewed at any time at <https://www.gandi.net/contracts> in an electronic format that allows them to be printed or downloaded for your records. Please note that we may also offer or provide services through third parties that are governed by the terms and conditions of the respective service providers. Those terms and conditions are either referenced in the respective Gandi Contract or will be made available to you when you purchase the respective service. For example, there are specific terms and conditions applicable to the registration of each Extension chosen which are as set forth by the Trustee Authority or Registry in charge of the Extension in question. By using any services we offer via a relationship we have with a third party, you agree to be bound by any rules applicable to Gandi with respect to those service providers.

We reserve our right to amend or supplement this Agreement at any time, at our discretion. When we do so, we will do our best to provide you notice and point out what is different or new. If at any time you do not agree to the terms of this Agreement or any of the terms of any applicable Gandi Contract, please discontinue use of the respective service immediately and close your Gandi Account.

Your continued use of your Gandi Account, the use of www.gandi.net (the “Site”, “Our website” or “Gandi's website”), the Gandi VPS Cloud Hosting and any affiliated Gandi's services that redirect or link to this Agreement constitutes your agreement to be bound by the terms of this Agreement and any other applicable Gandi Contract. Notice of any change will be considered given and effective on the date that we update the Site with the change. Please periodically review this Agreement to ensure you are aware of any changes.

Capitalized words used in this Gandi VPS Cloud Hosting Contract have the definition given to them in Gandi's General Service Conditions that are applicable unless defined otherwise in this Agreement.

As set forth in detail in Gandi's General Terms and Conditions of Domain Name Registration, for purposes of domain name registration and the provision of weblog services, Gandi acts through delegated authority in the name and on behalf of the related corporate entity, the French Registrar Gandi SAS. Any designation of Gandi as a Registrar herein represents the Registrar Gandi SAS.

SECTION 1. DESCRIPTION OF GANDI VPS CLOUD HOSTING SERVICE (IAAS)

Gandi provides cloud-based infrastructure as a service via a technical system of servers permanently linked to the Internet and remotely accessible. This service is also known as a remote or cloud virtual private server (VPS) service. We have established relationships with physical server data centers in three different locations: Paris, France; Baltimore, Maryland, USA; and Bissen, Luxembourg. You can autonomously create and customize website or data hosting service through a wide variety of available resources (CPU processing power, RAM, disk space, IPv4, bandwidth, etc.) to create one or more hosting servers (i.e. mail, web, VOIP, etc.) (the “Gandi VPS Cloud Hosting Service”). Each server that is created from our Gandi VPS Cloud Hosting Service with the resources you have chosen (“Your Servers”) will be assigned an IP address, so that server can be identified on the Internet.

The specific characteristics and technical limits of our Gandi VPS Cloud Hosting Service, as well as the corresponding pricing and any special conditions are detailed on our Site. You pick the resources that suit your needs. Thereafter, you can increase or decrease your CPU processing power, RAM, disk space and bandwidth on as needed, at any time, at your election, autonomously. You can also quickly and easily create your own data redundant or backup storage.

The Gandi VPS Cloud Hosting Service is designed for web professionals, system administrators or individuals with the technical experience and expertise required to manage and maintain their own servers in an autonomous manner. Like all technical service offerings, our services have limitations. Please ensure that the Gandi VPS Cloud Hosting Service is right for you and will meet your anticipated objectives before subscribing to the service.

Section 2. Gandi's Commitments and Uptime Guarantee

2.1. Our Commitments to You

Provided that the Customer is in compliance with its obligations to Gandi, abides by the applicable rules, and pays all applicable fees, throughout the duration of the subscription to the Gandi VPS Cloud Hosting Service, Gandi will:

- Provide you with cloud-based hosting and server infrastructure, with the resources you choose (as detailed on our Site) (if all such resources are immediately available, Gandi will use its best efforts to provision your servers to your specifications and provide you with access to them within 1 hour);
- Give you the ability to subscribe to, modify and cancel Gandi VPS Cloud Hosting Services, and any specific resources, autonomously, at any time, to fit your needs via your secure Gandi Account interface;
- Provide you with cloud-based hosting and server infrastructure solutions at competitive rates;
- Allow you to easily and autonomously manage Your Servers via your secure Gandi Account interface;
- Allow you to designate and manage other Administrators or Users of Your Servers; and
- Intervene rapidly in the event of a hardware or network failure at Gandi, in order to restore the service (where possible, within six hours of the incident being reported to Gandi).

2.2. Uptime Guarantee

Gandi offers a 99.95% service Uptime Guarantee for its Gandi VPS Cloud Hosting Service. If there is ever a month in which our Uptime falls below 21 minutes, you will be reimbursed a full 24-hour day of hosting fees for each 21 minutes, or part thereof, we

fall below our Uptime Guarantee. For purposes of our Uptime Guarantee, "Uptime" is defined as servers having power, connectivity to the Internet, and being responsive to a ping, and excludes service interruptions (or downtime) caused by: (1) periodic scheduled maintenance or repairs we may undertake from time to time, of which you have been notified or have been made public via Gandi announcement; (2) emergency maintenance, (3) interruptions caused by you from your configuration, custom scripting, coding or the installation of third-party applications; (4) outages that do not affect the appearance of your website but merely affect access to your website such as FTP and email; (5) causes beyond our control or that are not reasonably foreseeable; (6) outages related to the reliability of certain programming environments, (7) distributed denial of service (DDOS) attacks, and (8) problems caused by your physical location.

You are responsible for reporting to us that Uptime fell below 21 minutes in any given month and requesting a credit. You must make such a report and request a credit within five (5) days of experiencing an event resulting in Uptime falling below 21 minutes or the last day of the month in which Uptime falling below 21 minutes occurred.

Credit is given in the form of credit to your Gandi Hosting Credit Account. Credit is forfeited if your service is terminated. **Credit has no cash value and cannot be converted to a refund.**

Credit may be used only for the purchase of Gandi VPS Cloud Hosting Services, and is exclusive of any applicable taxes. Credit is your sole remedy for any downtime experienced.

Section 3. Your Obligations

In addition to any other applicable obligations set forth in the Gandi Contracts, you agree to the following:

3.1. Gandi VPS Cloud Hosting Acceptable Use Policy

To the fullest extent of the law, you assume full responsibility for the use of and Content associated with your Gandi VPS Cloud Hosting Service, Your Servers and any websites connected to Your Servers. For purposes of this Agreement, "Content" means any code, information, data, text, software, sound, image, photograph, graphic, drawing, video, signs, signals, writing, or message of any nature. You represent and warrant that you have the full rights, authorizations, licenses and permissions to use the Content and email address(es) that you choose and use in connection with any websites on Your Servers, and to use the Gandi VPS Cloud Hosting Service in the manner in which it was intended. To the fullest extent of the law, you assume full responsibility for any Content posted on Your Servers by third parties.

You agree to use the Gandi VPS Cloud Hosting Services only for lawful purposes and to not misuse our Gandi VPS Cloud Hosting Services.

The laws of the State of California, and the United States of America apply to this Agreement and your use of the Gandi VPS Cloud Hosting Service. The following represents a partial listing of activities that are prohibited when using the Gandi VPS Cloud Hosting Service, any one of which has the potential to result in account or service suspension or closure without prior or further notice. The Gandi VPS Cloud Hosting Service may NOT be used to host, display, post, propagate, upload, download, transmit, transfer, disseminate, distribute, reproduce, sell, link to nor facilitate access to:

- Content or services that violate any applicable export and re-export control laws and regulations;
- Content that is intended to promote illegal activities, is unlawful, threatening, obscene, abusive, harassing, defamatory, slanderous, libelous, or hateful;
- Content that contains private or confidential information,

including, but not limited to, your or any other person's or party's credit card information, social security number or other national identity number, non-public telephone number, address or email address;

- Content that, in our judgment, is child pornography, child erotica, indecently depicts children, or, that poses any harm or potential harm to any child, or content that is directed at a child and is objectively reasonably inappropriate for that child;
- Content that contains any malware, including, but not limited to, software viruses, Trojan horses, worms, time bombs or any other computer codes, files or programs designed to interrupt, destroy, impair or limit the functionality of any computer software, hardware, telecommunications equipment or other device or equipment;
- Content that infringes on any right of any person or party, including, but not limited to a person's or party's right to privacy or intellectual property rights;
- Activity that causes Gandi's systems or any of our IP ranges to be placed on any "black hole" list or any other mail filtering software used by companies on the Internet;
- Unsolicited or bulk email (SPAM), including, but not limited to, using Gandi's SMTP service or mail script to send out SPAM over our networks or other systems with a message referencing their website. You agree to comply fully with the CAN-SPAM Act and any amendments thereto;
- "Snowshoe spamming" (which, generally, is an abusive technique used to send SPAM from a variety of IP addresses in an effort to spread out the SPAM load);
- Content or services that threatens or disrupts Gandi's other customers, or Gandi's business, systems or services;
- Content that contains material that, in our sole judgment, is pornographic, sexually explicit, obscene or violent in nature;
- Content that is designed or used to hack or break into remote systems;
- Content that is setup to function as an open http proxy;
- Content that is designed or used to commit or facilitate any "phishing" attack;
- Content that, in our sole judgment, is designed to function as a farming bit coin, bitorrenting, pirated software website or illegal or unlicensed software or "warez" website;
- Content that, in our sole judgment, is designed to function as a "Tor relay" service or website;
- Content that contains URL shortener validation software;
- Content that, in our sole judgment, is designed or used to exploit, extract or otherwise gather any content or information from any Gandi database, including, but not limited to, incorporating data from any Gandi database into any email or "white-pages" products or services, whether browser-based, based on proprietary client-site applications, web-based, or otherwise;
- Content that, in our sole judgment, is designed or used to reverse engineer, hack into, invade or otherwise gain unauthorized access into any of our systems, communications devices or resources, or any other systems, communications devices or resources (including, but not limited to security probing activities or other attempts to evaluate the security integrity of a network or host system without permission); and
- Content that, in our sole judgment, is designed for, used to, operated as, or for purposes of topsites; IRC scripts/bots; IRCD (irc servers); proxy scripts/anonymizers; image hosting scripts (similar to Photobucket or Tinypic); AutoSurf/PTC/PTS/PPC sites; IP scanners; bruteforce programs/scripts/applications; mail bombers/spam scripts; banner-ad services (commercial

banner ad rotation); file dump/Mirror scripts (similar to rapidshare); commercial audio streaming (more than one or two streams); escrow/bank debentures or bank debenture trading programs; high-yield interest programs (HYIP) or related sites; investment sites (e.g. FOREX, E-Gold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme); sale of any controlled substance without prior proof of appropriate permits; prime banks programs; lottery/gambling sites; MUDs/RPGs/PBBGs; hacker focused sites/archives/programs; fraudulent sites (including, but not limited to sites listed at aa419.org & escrow-fraud.com); push button mail scripts; broadcast or streaming of live sporting events (e.g. UFC, NASCAR, FIFA, NFL, MLB, NBA, WWE, WWF, etc.); "tell a friend scripts"; anonymous or bulk SMS gateways; websites advertised via SPAM ("Spamvertised"); organization, entities or websites listed in the ROKSO database; PayDay loan sites (including any site related to PayDay loans, PayDay loan affiliate programs, etc.); or mailer pro.

You agree to advise any person to whom you give access to administer or use your Gandi VPS Cloud Hosting Service of this Acceptable Use Policy and to take all necessary actions to ensure that the use of any third party of your Gandi VPS Cloud Hosting Service is in conformity with your obligations herein and applicable law.

You further agree to address and remedy any use of your Gandi VPS Cloud Hosting Service that is in violation of this Agreement, whether or not you were the author of the Content or responsible for its presence on Your Servers, as quickly as possible, and to take all reasonable steps to ensure that the violation does not repeat. Upon our request, you agree to provide us with any documentation demonstrating your ownership of or rights to use your Content.

Additionally, you agree to cooperate in identifying any third party that may have contributed to your Content or had access to Your Servers.

You understand and agree that Gandi is solely acting as a common carrier in its capacity of providing the Gandi VPS Cloud Hosting Service or public access to any Content, is not a publisher of any material or information and has no right to edit or censor any Content or material in use by you (unless pursuant to any local, state or federal law, or any section of this Agreement). We are not responsible for and do not undertake pre-screening of any Content.

3.2. Self-Identification Requirement

As set forth in Gandi's General Service Conditions, you must truthfully identify yourself in completing the Gandi Account account owner information.

Furthermore, if you are using your Gandi VPS Cloud Hosting in connection with commercial purposes (i.e. the offering for sale of goods or services via a website hosted on Your Servers) you must disclose your identity and reasonably allow third parties to contact you by publicly identifying:

- If you are a physical person: your first and last name, mailing address, contact telephone number, and, if applicable, any relevant license or registration number; or
- If you are acting on behalf of a legal entity: the business name, mailing address, contact telephone number, and, if applicable, any relevant license or registration number.

By default, our name, address and contact telephone number are associated with Your Servers' IP as your webhosting provider when searching on webhost lookup tools.

3.3. You are Responsible for Monitoring the Content on Your Servers

Before publishing Content on any websites connected with your Gandi VPS Cloud Hosting, you must ensure that such Content is in compliance with the Acceptable Use Policy. If you allow third parties to publish Content on websites connected with Your Servers, you are responsible for monitoring the Content published by third parties and, when appropriate, deleting it immediately. If you cannot or do not want to monitor and regulate the Content posted to websites connected with Your Servers by third parties, you must elect to close the comments and trackbacks to the websites connected with Your Servers. You may use software that helps you monitor and takedown Content that is not appropriate or in conformity with our Acceptable Use Policy. If the Content on websites connected with Your Servers is not appropriate for certain audiences (for example, children), it is your responsibility to take reasonable measures to prevent access to such websites by the audiences for which it would be inappropriate.

In the event that a website connected with Your Server is intended to be used by a minor, his or her legal guardian must assist him or her in monitoring the Content on that website and assume the responsibility for ensuring that the Content on that website conforms to the Acceptable Use Policy.

3.4. You Must Abide by Copyright Laws and Cooperate with Us in Responding to DMCA Complaints Regarding Your Content

You may not use the Gandi VPS Cloud Hosting Service in any manner that infringes upon any copyright. Such infringement may include, but is not limited to selling counterfeit goods, unauthorized copying of photographs, books, music, videos, or any other copyright protected work, or facilitating infringement such as by way of a peer to peer file sharing. It is our policy to promptly investigate compliant notices of alleged copyright infringement that are provided to us in writing regarding Content hosted on or otherwise displayed via our systems. Our response to such notices may include removing or disabling access to the Content or website claimed to be the subject of infringing activity, without prior notice, and without regard to the complaint's substance or merit (or lack thereof). Gandi reserves the right, in its sole discretion, to close any Gandi Account or Gandi VPS Cloud Hosting for which Gandi receives three or more copyright infringement complaints, without prior notice.

We abide by the safe harbor provisions of the Digital Millennium Copyright Act ("DMCA"). Upon receipt of an infringement counter notice that substantially complies with the counter notification requirements set forth in the DMCA, the DMCA requires us to provide the complaining party with a full copy of the counter notice provided to us by the alleged infringer or his/her authorized agent. The DMCA also requires us to permit the alleged infringer to restore access to the material claimed to be the subject of infringing activity, within no less than ten business days and no more than fourteen business days following our receipt of a compliant counter notice, unless we first receive notice that the complaining party has filed an action seeking a court order to restrain the alleged infringer from engaging in infringing activity. Be advised, regardless of whether or not the complaining party files an action seeking a court order to restrain the alleged infringer from engaging in infringing activity, the complaining party may still maintain the right to seek relief in a court of law. It is our policy to adhere to all orders of the court.

Any court order issued in connection with a complaint that has been filed against the alleged infringer with which we are served will, with immediate effect, supersede any allowance we may have made permitting the alleged infringer to re-enable or otherwise restore the access to the material claimed to be the subject of infringing activity.

A filing of a copyright infringement counter notice may result in litigation between and among the parties.

3.5. You Must Abide by Trademark Laws and Cooperate with Us in Responding to Trademark Complaints Regarding Your Content

You may not use the Gandi VPS Cloud Hosting in any manner that infringes on the intellectual property rights of any person or party. Such infringement may include, but is not limited to selling counterfeit goods, or unauthorized copying of photographs, logos, designs or other lawfully protected works. It is our policy to promptly investigate compliant notices of alleged trademark infringement that are provided to us in writing regarding Content hosted on or otherwise displayed via our systems. Our response to such notices may include removing or disabling access to the material claimed to be the subject of infringing activity, without prior notice, and without regard to the complaint's substance (or lack thereof). Presently, there is no counter notification process in place for trademark law. If you wish to object to a complaint filed against you, you will need to address the matter up with the trademark owner in a court of law. In any case, you hold Gandi completely harmless in all matters concerning our action with respect to any trademark infringement complaint. Gandi reserves the right, in its sole discretion, to close any Gandi Account for which it receives three or more trademark infringement complaints, without prior notice and without a refund of any fees.

3.6. You Alone Are Responsible for Backups

The backing up of the entire contents of Your Servers is completely your responsibility. We do not keep backups of your Content. You acknowledge and agree that it is entirely your responsibility to perform regular backups of the content on Your Servers. Gandi does not perform backup service for the Gandi VPS Cloud Hosting Service. We strongly recommend that you perform regular backups of your Content and a final backup before deciding to terminate your Gandi VPS Cloud Hosting Services.

Upon the expiration of this Agreement, termination, deletion or cancelation of Gandi VPS Cloud Hosting Services, all of the Content on Your Servers will be totally deleted, without any possibility of recovery. Therefore, we strongly recommend that you perform regular backups of Your Servers and your Content and a final backup before its expiration.

It is your obligation to take all necessary measures to save your Content in any format you deem necessary to recreate Your Servers at another time or with another provider.

In no event will Gandi be held liable for any loss of any Content. It is your sole responsibility to maintain appropriate backup of your Content.

3.7. Always Having Strong, Secret Passwords is Your Responsibility

You are required to and solely responsible for maintaining the confidentiality and security of the passwords used to access your Gandi Account and your Gandi VPS Cloud Hosting Service. Any and all activity that occurs under your username and password will be considered done by you and you bear sole responsibility for that activity. Gandi is not be responsible for any loss or damage arising from or otherwise related to your failure to maintain control over access to your password or username, whether due to your own negligence or for any other reason. As a general practice, it's best that you change all of your passwords periodically and at any time you think that the username and password to your Gandi Account, your Gandi VPS Cloud Hosting Service or any of your other usernames or passwords have become compromised.

3.8. Obligation to Not Disrupt Our Systems and to Preserve the Reputation of Our IP Addresses

You agree to use our services in a manner that does not interfere with or otherwise disrupt service to our other customers or any of our systems. Gandi reserves the right to suspend or close the

Gandi Account and associated Gandi services, without prior notice, if in our judgment such interference or disruption is determined to exist. You agree to maintain the reputation of our IP addresses and not to undertake any action that causes our mail servers or any of our IP address or ranges to be placed on any "blacklist" or "black hole list" (i.e. www.spamhaus.org, "XBL", or "SBL") or any other mail filtering software systems used by companies on the Internet. You agree to notify us immediately if you learn that any of our IP addresses have been placed on any such list. If necessary, you agree to take whatever actions are necessary (or fully cooperate with us in taking whatever actions we deem necessary) to remove any of our IP addresses from any such list immediately.

3.9. Obligation Not to Manipulate Our IP Addresses

Gandi is and will remain the sole owner of all IP network addresses within Gandi's network. You are not permitted to modify any configuration that will otherwise conflict with, or disrupt our network service. We will use our reasonable best efforts to ensure that you the IP addresses allocated to you remain allocated to you. However, Gandi reserves the right to change your underlying IP network address for any reason (including, but not limited to, for upgrades, security provisioning, or other network migration service). If we need to change the IP addresses you have been allocated, we will use our reasonable best efforts to provide you with advance notice, but we reserve our right to change them without notice too. We may require you to justify any request for allocation of different or additional IP addresses. Our justification requirements are subject to change at any time. We reserve the right to reject any request for different or additional IP addresses based on insufficient justification or current IP address utilization.

3.10. You Are Responsible for Your Domain Names

If a domain name associated with a site hosted on Your Servers expires, the Content of the site hosted on Your Servers will no longer be available online via this domain name. You are responsible for maintaining the domain name(s) associated with Your Servers in good standing. The Gandi VPS Cloud Hosting Service does not include obtaining, monitoring or renewing any of your domain names.

Section 4. Billing, Pricing and Payment

4.1. Pricing by the Hour; Gandi Credits; Your Gandi Hosting Credit Account

Gandi VPS Cloud Hosting Service is billed by the hour. The price per hour varies depending on your selection of various customizable resources such as amount of RAM, number and location of servers, number of CPU cores, etc. You will be billed for the full hour once any hour of service begins, even if only a fraction of the hour is used, based upon the features in place at the start of the hour. Your use of bandwidth is free until you reach the threshold Gigabytes per month (as indicated on our Site). Thereafter, you will be billed per whole Gigabyte used according to the prices indicated on Site at the time the Gigabytes are used.

You pay for the hourly rate with pre-paid credits deducted from a credit account created when you subscribe to the Gandi VPS Cloud Hosting Service (your "Gandi Hosting Credit Account") (i.e. your credit bank account). Credits can be purchased in two ways: (1) "on demand" (pay-as-you-go by purchase anytime, at your election, in any amount) with automatic deduction from your Gandi Hosting Credit Account as services are used, or (2) "by pack" (pre-paid by purchasing credits in bulk or in bundles at discounted rates in advance).

The price per credit is as posted on our Site at the time of your purchase of credits. By default, your Gandi Hosting Credit Account will be provisioned to automatically deduct the credits needed from your credit balance to pay for the Gandi VPS Cloud Hosting Service you have selected, as long as you have a sufficient pre-paid balance in your Gandi Account.

Your Gandi Hosting Credit Account is automatically created when you subscribe to the Gandi VPS Cloud Hosting Service and create a Gandi Account. As services are used, credits are automatically deducted from your Gandi Hosting Credit Account as long as credits are available, unless you specify otherwise. You authorize us to debit your Gandi Hosting Credit Account for amounts corresponding to your use per hour. Payment is due immediately to begin or continue the service. In other words, you must have credit in your Gandi Hosting Credit Account and have authorized us to use it to start or continue the Gandi VPS Cloud Hosting Service. Once payment confirmation for your credits is received and you authorize us to use your credits for the Gandi VPS Cloud Hosting Services, the services will begin or continue.

If you do not have enough credits in your Gandi Hosting Credit Account to pay for your hourly usage or you have not authorized us to deduct credits from your Gandi Hosting Credit Account to pay for the Gandi VPS Cloud Hosting Service, your Gandi VPS Cloud Hosting Service will cease immediately. Your Servers and any associated technical services will be automatically deactivated and then deleted. Your Content may also be immediately deleted. Services that continue to use resources, even if deactivated, will continue to debit your Gandi Hosting Credit Account into a negative balance. To reactivate your Gandi VPS Cloud Hosting Service, you will need to credit your Gandi Hosting Credit Account in an amount sufficient to pay for your accumulated negative balance, if any, as well as your future use of the Gandi VPS Cloud Hosting Service, and authorize us to use that credit to resume your Gandi VPS Cloud Hosting Service.

Hosting credits are non-refundable, non-transferable and cannot be redeemed for cash. The earliest purchased or received credits will be used first. Unused hosting credits will expire and have no further value if they remain unused for 2 years from the time of purchase or receipt. Upon expiration, your hosting credits will be deleted without possibility of re-credit or refund. You will receive an email notification to the email address associated with your Gandi Account that your hosting credits are set to expire at least 1 month before deletion of your hosting credits.

4.2. Managing your Gandi VPS Cloud Hosting Service Billing and Your Gandi Hosting Credit Account

You manage your Gandi Hosting Credit Account autonomously by logging into your Gandi Account with your username and password. A Gandi Hosting Credit Account can only be associated to a single Gandi username (or handle), and can only be used in connection with the Gandi VPS Cloud Hosting Service.

The Gandi Hosting Credit Account interface allows you to:

- Subscribe to, modify and cancel Gandi VPS Cloud Hosting Services and specific resources to fit your needs;
- Change the technical configurations of Your Servers;
- Manage Your Servers (i.e. publish, delete or modify the Content on Your Servers);
- Update your contact information;
- Designate and manage other Administrators or Users of Your Servers;
- Change your or your Administrators' or Users' passwords;
- Purchase credits on demand (pay-as-you-go) or by pack (pre-paid bulk);
- Switch between payment options;
- Change your election for automatic payment for Gandi VPS Cloud Hosting Service with any available credit balance;
- View your credit balance in real time;
- View your receipts for payments;
- View your Usage Reports;
- Activate/deactivate automatic replenishment of your Gandi Hosting Credit Account; and
- Request alert notices to be sent to you when your Gandi

Hosting Credit Account balance is below a threshold that you have defined.

4.3. Billing and Payment

You purchase credit for Gandi VPS Cloud Hosting Service via your Gandi Hosting Credit Account (which is part of your Gandi Account).

Our continuing to provide you with Gandi VPS Cloud Hosting Services is at all times contingent upon your timely purchase and use of the required credits. The means and methods of payment that we accept are set forth in Gandi's General Service Conditions. The easiest and fastest way to make a payment is by credit card or PayPal. Your Gandi Hosting Credit Account will not be credited with credits until your payment for such credits has been validated and processed. For bank transfers, we require at least seven (7) days from our receipt of the bank transfer for the processing and posting of credit to your Gandi Hosting Credit Account. We do not accept bank transfers for less than ten dollars (\$10 USD). We are not responsible for bank-related or other third party related payment delays such as validation or fraud holds, processing delays, etc. We are likewise not responsible for payment processing delays that are the result of incomplete or incorrect transaction or account information or identification references provided by you that make it more difficult for us to pair your payment to your account.

It is your responsibility to ensure that your Gandi Hosting Credit Account has sufficient credit in it when more credit is needed to continue your Gandi VPS Cloud Hosting Services without interruption. To be clear, you must submit your payment by a date and select a payment method that ensures your payment will be received before your Gandi Hosting Credit Account is depleted. If your Gandi Hosting Credit Account does not have enough credits in it to continue to pay for your Gandi VPS Cloud Hosting Services, some or all of your Gandi VPS Cloud Hosting Services will be suspended or terminated when payment is due. There is no grace period.

When we receive and validate your payment, you will receive an email confirming that additional credits have posted to your Gandi Hosting Credit Account. The email will include a link that allows you to access your receipt. Your receipt is also accessible at all times via your Gandi Account, in the "Billing" section.

Each month, we will post a Usage Report to your Gandi Account that will list your total monthly usage and the total amount of credit you have available as of the specific date at the end of the month. If you have selected the "on demand" payment option, an invoice summarizing the "on-demand" hosting credits provisioned during the month will also be available. Your monthly billing day corresponds to the day when you first subscribed to the Gandi VPS Cloud Hosting Service.

Section 5. Subscribing to Your Gandi VPS Cloud Hosting Service

You subscribe to the Gandi VPS Cloud Hosting Service via your Gandi Account. You set up your Gandi Account on our Site and by following the process described in Gandi's General Service Conditions. You will receive an email notification when your Gandi Account is activated. Once your Gandi Account is activated, you can use your username and password to login and subscribe to the Gandi VPS Cloud Hosting Service and select your specifications and resources. Then, you will select the payment method for the credits to fund your Gandi Hosting Credit Account. Once your payment is confirmed and you have subscribed to the Gandi VPS Cloud Hosting Service with your specifications and resource selections, you will receive another email when Your Servers have been provisioned to your requirements with the resources you have specified and are ready for you to use (typically within 1 hour of your subscribing to the Gandi VPS Cloud Hosting Service, unless you are requesting the provisioning of a significant number of servers, in which case it may take longer).

You can modify your Gandi VPS Cloud Hosting Service to best suit your needs at any time through your Gandi Account. You can cancel, change or downgrade your resources at any time.

Section 6. You Are Responsible for Managing the Appropriate Hardware, Software and Security Measures for Your Servers

By subscribing to the Gandi VPS Cloud Hosting Service, once control of Your Servers has been turned over to you by us, you take full responsibility for setting up, maintaining and securing Your Servers. You are responsible for configuring Your Servers to meet your needs and objectives, any necessary technical interventions on Your Servers to ensure proper functioning (including in the case of malfunction or failure), and procuring, installing, maintaining and updating any software necessary to secure or restrict access to part or all of Your Servers, Content, websites or applications hosted on Your Servers and implementing security best practices. You are also responsible for any backups, data redundancy, and data recovery measures.

Gandi agrees to undertake commercially reasonable best efforts to ensure the security of its hardware and its technical infrastructure. However, you are solely responsible for the security of each of Your Servers and your Content. You agree to take all steps necessary to secure access to Your Servers and your Access Codes, as well as the username and passwords for every third party, website or service made available on Your Servers. You agree to inform Gandi immediately of any security flaw or any abusive use of Your Servers of which you become aware, regardless of the type, so that we can coordinate our efforts, if necessary. We reserve the right to suspend, or even terminate or delete Your Servers, your Content or our services and associates resources, without prior notice if necessary, in order to protect our systems from a security issue in connection with Your Servers.

Section 7. You Are Responsible for the Actions of Others Accessing Your Servers

You are entirely responsible for your Gandi Account, Your Gandi VPS Cloud Hosting Service, any Content on Your Gandi VPS Cloud Hosting Service and your obligations under this Agreement and any other applicable Gandi Contract. If you give access to Your Gandi VPS Cloud Hosting Service to anyone (a User), you guarantee that this person will agree to and abide by this Agreement and any other applicable Gandi Contract. You also agree that you are completely responsible for the actions of your Users. As set forth herein, you agree to indemnify Gandi and Gandi's related parties for any claims concerning any actions of your Users. You are responsible for any Content associated with your Gandi Account or Your Gandi VPS Cloud Hosting Service. You agree to inform your Users of the obligations of this Agreement and any other applicable Gandi Contract.

Section 8. Limitation on Transferability of Your Servers

We cannot transfer Your Gandi VPS Cloud Hosting Service to any third party, unless compelled to do so by law.

Section 9. Term of the Agreement

The term of this Gandi VPS Cloud Hosting Contract begins upon the subscription to the service and the activation of the service and continues unless terminated.

Section 10. Termination or Cancellation of this Gandi VPS Cloud Hosting Contract by You

You may cancel the Gandi VPS Cloud Hosting Service or release all or some of the services or additional resources associated with your Gandi Account at any time, at your election, autonomously via your Gandi Account, provide that your account is in good standing (i.e. not suspended). You will be billed for any hour or portion thereof that you have used. There are no refunds upon cancellation of the Gandi VPS Cloud Hosting Service.

When you cancel your Gandi VPS Cloud Hosting Services completely, your Content will be deleted and Your Servers will no longer be accessible via the Internet by you or third parties. You alone are wholly responsible for any consequences of your cancellation of the Gandi VPS Cloud Hosting Services, including as a result of the deletion of Content. Please note that deleting your Gandi VPS Cloud Hosting Service may not remove your Content from the Internet. While it will be permanently deleted from Your Servers, your Content may have been referenced, cited or copied onto other websites, any of which may retain some or all of your Content, beyond Gandi's control.

Section 11. Suspension or Termination of this Agreement and/or Your Gandi VPS Cloud Hosting Service

11.1. Suspension or Termination for Failure to Pay

If you do not have enough credit in your Gandi Hosting Credit Account to pay for your Gandi VPS Cloud Hosting Services at the time payment is due (services are set to continue) or you have not authorized us to automatically deduct credit from your Gandi Hosting Credit Account to pay for your services to automatically continue, your Gandi VPS Cloud Hosting Services will be suspended pending final termination. You will be alerted of the expiration, at least the day of the expiration, by email to the email address associated with your Gandi Account.

The Gandi VPS Cloud Hosting Service will be suspended, during its active term, in the event that you do not pay to renew it. While your Gandi VPS Cloud Hosting Service is suspended, you will not be able to access Your Servers. During the suspension period, you will continue to be charged (into an account deficit) for services that use resources, even while deactivated. If you do not add credits to your Gandi Hosting Credit Account sufficient to resume service, when your Gandi Hosting Credit Account reaches a deficit of -30,000 hosting credits, you will receive an email notification warning of the permanent deletion of your Gandi VPS Cloud Hosting Services, Your Servers, and your Content. If your Gandi Hosting Credit Account still remains unfunded 24 hours after this last email notification, Your Servers, the technical services that are associated with it, and your Content will be permanently deleted.

The Content associated with the Gandi VPS Cloud Hosting Service will be permanently deleted and unrecoverable after the suspension period expires. You are responsible for backing up your Content. In the event Your Servers, your Content and your services are deleted, we will not be able to recover Your Servers or your Content for you.

11.2. Suspension or Termination for Breach of this Agreement or any Other Applicable Gandi Contract

In the event that you breach your obligations set forth in this Agreement or in any other applicable Gandi Contract, depending on the nature or reoccurrence of the breach, in its sole discretion, Gandi will (i) terminate this Agreement; (ii) terminate this Agreement and suspend, deactivate, delete or terminate your Gandi Account and/or your Gandi VPS Cloud Hosting Service and/or any other associated services; or (iii) give you notice of the breach and an opportunity to cure the breach within fifteen (15) calendar days of our notification to you thereof. In its sole discretion, Gandi may terminate this Agreement and/or suspend, deactivate, delete or terminate your Gandi Account and/or your Gandi VPS Cloud Hosting Service and/or any other associated services with immediate effect, without prior or further notice.

In the event that Gandi elects to terminate this Agreement and/or suspend, deactivate, delete or terminate your Gandi Account and/or your Gandi VPS Cloud Hosting Service and/or any other associated services as a result of your breach of this Agreement, you acknowledge that you will not be entitled to a refund of any kind. You further acknowledge and agree that Gandi will not be held responsible or liable for any damages of any kind related to or caused by Gandi's termination or suspension of your Gandi

Account and/or your Gandi VPS Cloud Hosting Service and/or any other associated services. All content will be completely deleted from our servers and we will not have any backup of the Content. Again, we recommend that you run very regular backups. Termination or suspension of services does not excuse your obligation to pay any outstanding amounts due in connection with services already provided or domains already registered.

Gandi reserves the right to pursue any remedy available to it at law or in equity if you breach this Agreement.

11.3. Suspension or Termination as Required by Law or Regulation

You agree that you will use the services offered by Gandi in a manner that is consistent with all applicable French and U.S. local, state and federal laws and regulations, regardless of whether or not you are a citizen of the United States or France and regardless of where you live or house your data. Customers found to be using our services or systems for illegal activities will have their accounts closed with immediate effect, without prior or further notice, and without refund of any fees. You are solely responsible for determining the laws and regulations applicable to your use of the services.

We value our customers' privacy. It is our policy to cooperate with law enforcement and administrative agencies only upon lawful request or order, or substantial justification. Upon lawful request or order from a court or law enforcement, arbitral body, administrative commission or government administrative agency, we may, without notice to you or your consent, provide the information requested by such agency to that agency, including your Content. Upon lawful request or order from a court or law enforcement, arbitral body, administrative commission or government administrative agency, we may, without notice to you or your consent, suspend, deactivate, delete or terminate your Gandi Account, your Gandi VPS Cloud Hosting Service and any other associated services.

We may also be required to suspend, deactivate, delete or terminate your Gandi Account, your Gandi VPS Cloud Hosting Service and any other associated services, without notice to you or your consent, (i) to conform to the rules to which we and the Registrar Gandi SAS must abide as a technical intermediary and pursuant to our agreements with the regulatory bodies, (ii) to fix a technical problem, or (iii) for purposes of maintaining or repairing our system's stability.

In the event that Gandi must terminate this Agreement and/or suspend, deactivate, delete or terminate your Gandi Account, your Gandi VPS Cloud Hosting Service and any other associated services for any of the foregoing reasons, you acknowledge that you will not be entitled to a refund of any kind. You further acknowledge and agree that Gandi will not be held responsible or liable for any damages of any kind related to or caused by Gandi's termination or suspension of your Gandi Account, your Gandi VPS Cloud Hosting Service or any related services. All content will be completely deleted from our servers and we will not have any backup of the Content. We recommend that you run very regular backups. Termination or suspension of services does not excuse your obligation to pay any outstanding amounts due in connection with services already provided or domains already registered.

11.4. Suspension or Termination for Maintenance or Security Breach

Your Gandi Account, your Gandi VPS Cloud Hosting Service and/or any other associated services may be suspended or terminated in the event that you breach your obligations set forth in this Agreement or in any other applicable Gandi Contract or in the event that your account, service or Content poses a security threat to or disrupts Gandi's other customers, or Gandi's business, systems or services.

Gandi reserves the right to terminate or suspend all or part of the Gandi VPS Cloud Hosting Service to perform any required

technical intervention, to address any security threat, to improve performance, or to proceed with any necessary or requested maintenance, assistance, or support. This includes, but is not limited to:

- To provide services you have requested;
- To stop a technical malfunction on our system;
- To carry out a maintenance operation;
- To protect the integrity and stability of our systems;
- To stop abusive use and/or illegal use of Your Servers by third parties without your immediate response (i.e. spamming, fraud, hacking, unauthorized access attempts);
- To prevent damage to, or an attempt to damage our systems or infrastructure caused by Your Server (i.e. DDoS, botnet, spamming); and
- If necessary, as part of our customer service, with your consent.

Please note that, in most cases, our intervention can technically only occur on a server as a whole, and not on any specific content.

We will use our reasonable best efforts to reduce any resulting downtime to as little as possible, and, whenever possible, to inform you in a reasonable amount of time beforehand and specify the date, nature, extent and duration of any anticipated downtime.

Section 12. Effects of Our Actions

To remove or disable access to material claimed to be the subject of infringing activity or that, in our judgment, breaches any section of this Agreement, Gandi will suspend or delete Your Server(s) on which the Content is hosted.

Note that intervention by Gandi will result in the suspension or permanent deletion of Your Server(s) and any content that it (they) may contain.

In any such case, you will not be permitted to re-enable or otherwise restore access to Your Servers(s) until you have complied with all the terms set in our notice to you concerning the issue.

Our intervention can technically only occur on a server as a whole, and not on selected content.

If any Server is suspended or deleted pursuant to Gandi's obligations as a service provider under the DMCA, or pursuant to any section of this Agreement, re-enabling or otherwise restoring access to that Content or website is prohibited until and unless you are otherwise notified by Gandi.

In any event where the Content or website is re-enabled or otherwise restored (whether on the original Gandi Account or a different Gandi Account), absent Gandi's express authorization as set forth in this Agreement, the Gandi Account will be closed with immediate effect and without prior or further notice.

You must immediately remove or disable access to any duplicative or derivative works of any Content or website. Gandi may disable pursuant to any section of this Agreement, whether or not such Content has the same title, name or label as the offending Content, is in any other format, form, size or is in or on any other directory or location on our systems. Your failure to do so could subject you to civil liability pursuant to U.S. federal law, and could also result in the suspension or closure of the Gandi Account.

Section 13. Availability of Service

You understand and agree that interruptions of service may occur due to scheduled or emergency maintenance, updates and repair by Gandi, or by strikes, riots, vandalism, fires, inclement weather, third-party provider outages, cable cuts, power crisis shortages, acts of terrorism, and or uncontrollable acts of God, or other

causes beyond Gandi's control, as defined by standard practices in the industry. From time-to-time, it may become necessary for Gandi to stop, reboot, disable, reconfigure, re-route or otherwise interrupt Your Servers for indeterminate and unpredictable lengths of time. You agree that under no circumstances will Gandi be held liable for any financial or other damages due to such interruptions. In no event shall Gandi be liable to you or any other person or party for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, loss of income or cost of replacement services. Such failure or delay shall not constitute a default under this Agreement.

Gandi reserves the right to reset the password used to access Your Gandi Account, in case it is required, such as to protect the account from fraudulent actions, usurpation of identity or legal notice.

In our sole discretion, we may suspend or delete Your Server in adherence to any new governmental regulations or policies that may arise, either domestically or internationally.

We reserve the right to refuse service. Notwithstanding the foregoing, we reserve the right to refuse access to Your Servers to anyone, at anytime, for any reason or no reason.

From time to time, it may be necessary for us to update certain software, applications and/or Your Servers without prior notice. An example of a needed update is an update from one version of PHP to another. The updated version may not be compatible with your Content and/or website(s), and your Content and/or website(s) may cease to function as expected following the update. In most all cases, we are unable to rollback or otherwise reverse the update. You are solely responsible for adjusting your Content and website(s) to and ensuring compatibility with the updated version and you agree that Gandi shall not be liable in any way for any loss or damage you or any other person or party may suffer as a result of our update to certain software, applications and/or Your Servers.

Section 14. Reselling Our Services and Online Stores

14.1. Reselling Space

You are authorized to resell space on Your Servers to third parties and/or to use Your Servers to sell or offer goods or services to third parties (both "Your Users"). You are solely and fully responsible for and to Your Users. Under no circumstances will we be held responsible for or to Your Users in connection with Your Servers. You are not permitted to represent to Your Users or potential customers of yours that you are Gandi or have any relationship with Gandi other than a user of Gandi's services. You may not hold yourself out as our agent or business partner.

By reselling, you agree to offer Your Users the same level of service quality as provided by Gandi and to respect the same ethical standards.

We will not provide support to Your Users and you may not provide our Customer Support contact information to Your Users for support service purposes.

We will not mediate any dispute or controversy arising between you and Your Users or Your Users any third party. However, You agree that we may intervene if required, e.g. legal notice, etc. Depending of the claim nature, we will give you a prior notice of such a determination, and will include information reasonably necessary.

You are responsible for all Content stored or transmitted by Your Users and any other actions of Your Users. We will hold you responsible for any of Your Users violations of law or the terms of this Agreement, including the Acceptable Use Policy. Before any reselling of space on Your Servers to any third party, you agree to ensure that Your User does not directly or indirectly participate in

spamming activities listed in the "Spamhaus" registry (Spamhaus Register of Known Spam Operations, www.spamhaus.org) and is not listed on any blacklist or black hole list.

You agree to enter into a contract with Your Users containing terms no less protective of our interests than this Agreement, Gandi's General Service Conditions, and Privacy Policy. Your limitation of liabilities, warranties and privacy policy must be similar to those that we include in our Agreements. You agree to make your contract available to Your Users before you enter into a contract with them and to us, upon our request. We have no contractual relationship with Your Users. You agree to indemnify and hold us harmless from any claims made against us by Your Users based on the Service we, or any party providing services through us, provides. This indemnification survives the termination of this Agreement.

Our authorization for you to resell space on Your Servers to third parties does not give you any exclusive or territorial rights. We still have the right to enter into reseller relationships with other entities on terms that may differ from our terms with you. Other companies, including Gandi and our other resellers, can and will compete against you.

You will have no ownership right in our Marks, and agree to take no action that might jeopardize our rights in our Marks, or appropriate them for your own use, or those of another.

You are not authorized to make any representation, contract or commitment on our behalf except to the extent specifically requested or authorized by us in writing.

You shall not make written or oral promises or representations to any prospective customer on our behalf.

You acknowledge that we have not promised you any particular reward, income, profits, commission or success for such referrals.

14.2 Online Store Sales Practices

In the conduct of your business, you agree to take every effort to safeguard Gandi's business reputation and protect the value of its name and goodwill. You will not undertake any business that might be harmful to us. You agree to refrain from all deceptive, misleading or unethical business practices, and to comply with all applicable policies and procedures as well as applicable state and federal rules and regulations. Any violation by you of this paragraph shall constitute a material breach of this Agreement and, in addition to all remedies available to us, you agree to indemnify and hold us harmless for any fee, fine, penalty or liability imposed against us arising from your activities. The prices you charge for your services should be solely determined by you. You are responsible for calculating and collecting from Your Users all charges related to your services, including any applicable taxes.

Section 15. Limitation of Gandi's Responsibility for Technical Problems

In addition to the general limitation of liability contained in this Agreement and in any other applicable Gandi Contract, by way of example, you agree that we cannot be held responsible for any resulting harm in the following specific cases:

- Difficulties accessing your Content or Your Servers, slow download times, or problems sending and receiving emails or any other kind of Content and/or attached files due to overutilization of the network at certain times, the technical characteristics and limits of the Internet, the speed, security or quality of your Internet connection, or other software or hardware problems outside of our control;
- The theft or intentional, negligent or accidental communication of the username and passwords and/or the Access Codes

associated with your Gandi Account;

- Problems with the accessibility or functioning of Your Servers related to any applications or Content that you put on it;
- Problems related to the high volume of web traffic to Your Servers;
- Any malware, including, but not limited to, software viruses, Trojan horses, worms, time bombs or any other computer codes, files or programs designed to interrupt, destroy, impair or limit the functionality of any computer software, hardware, telecommunications equipment or other device or equipment;
- Any direct or indirect intrusion of a third party into Your Servers (attack, hacking, etc.);
- Your receipt of spam or other such undesired or unrequested content or communications;
- The listing of one of the IP addresses that you have been assigned on any blacklist or black hole list; and
- Loss of Content, under any circumstances.

In order to prevent any abusive use or access to Your Servers by any unauthorized third party, we strongly recommend that you configure Your Servers appropriately, use firewalls and other commercially available security measures, implement security and data protection best practices, and monitor unusual transmissions of Your Servers (i.e. by installing system monitoring software). We do not monitor your systems for you for this purpose.

Section 16. Indemnification

In accordance with the Gandi Contracts, you are solely and fully responsible for your use of your Gandi Account, the Gandi VPS Cloud Hosting Services and/or any other associated services. You are responsible for the actions of any users of your Gandi Account or Your Servers or any Access Codes associated with your Gandi Account. You are also responsible for the actions of the Contacts you designate in your Gandi Account or your Gandi VPS Cloud Hosting Service.

You agree to defend, indemnify and hold Gandi and each of its respective affiliates, directors, officers, agents (including Trustees) and employees harmless from and against any and all claims, obligations, losses, damages, costs, liabilities and expenses (including reasonable attorneys' fees and costs) incurred by any or all of them arising from or due to any claim, action, dispute or demand made by any third parties (including but not limited to customers or licensees of Customer) that are related to or arising out of your use of the any Gandi service or from your placement or transmission of any materials or content onto or through Gandi's servers. Such liabilities may include, but are not limited to: (a) trademark, trade name, trade dress infringement (including cybersquatting or typo squatting claims) and related claims; (b) false advertising claims, (c) liability claims for products or services, (d) infringement or misappropriation of intellectual property rights, (e) violation of rights of publicity or privacy, defamation, libel, slander obscenity, or child pornography, (f) spamming or any other offensive or harassing or illegal conduct (including but not limited to any violation of our acceptable use policy), or (f) any other damage arising from your equipment, your business, or your use of our services.

This indemnification provision is a material provision of this Agreement and shall survive the termination of this Agreement.

Section 17. Limitation of Liability; Disclaimer of Warranties

GANDI SPECIFICALLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THIS INCLUDES LOSS OF CONTENT, DOMAIN NAMES OR DATA RESULTING FROM DELAYS, NO DELIVERIES, WRONG DELIVERY, AND ANY AND ALL SERVICE INTERRUPTIONS CAUSED BY GANDI AND GANDI DOES NOT WARRANT THAT THE SERVICE OFFERED

OR PROVIDED BY GANDI IS FREE OF BUGS, ERRORS, DEFECTS, VIRUSES OR DEFICIENCIES. IN NO EVENT SHALL GANDI BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, EVEN IF GANDI HAS BEEN ADVISED BY CUSTOMER OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

IF GANDI'S SERVICE TO CUSTOMER IS DISRUPTED OR MALFUNCTIONS FOR ANY REASON, GANDI SHALL NOT BE RESPONSIBLE FOR LOSS OF INCOME DUE TO DISRUPTION OF SERVICE, BEYOND FEES PAID BY CUSTOMER TO GANDI FOR SERVICE, DURING THE PERIOD OF DISRUPTION OR MALFUNCTION. YOUR SOLE AND EXCLUSIVE REMEDY FOR DEFECTS IN THE SERVICE IS AS SET FORTH IN THIS SECTION.

GANDI'S SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. GANDI SHALL NOT BE LIABLE FOR ANY DAMAGES YOU OR ANY OTHER PERSON MAY SUFFER. NOTWITHSTANDING THE FOREGOING, YOU AGREE THAT IN NO EVENT WILL GANDI BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF GANDI'S SERVICE) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR YOUR USE OR INABILITY TO USE THE SERVICE (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF GANDI'S SERVERS, UNAVAILABILITY OF GANDI'S CUSTOMER SERVICE TEAMS, OR INABILITY TO REGISTER OR RENEW A DOMAIN NAME), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF GANDI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THIS INCLUDES BUT IS NOT LIMITED TO ANY LOSS THAT MAY OCCUR DUE TO THE FAILURE OF YOU OR YOUR AGENT TO PAY ANY FEES HEREUNDER, THE PROTECTION OR PRIVACY OF ELECTRONIC MAIL OR OTHER INFORMATION TRANSFERRED THROUGH THE INTERNET OR ANY OTHER NETWORK GANDI OR SERVICE ITS CUSTOMERS MAY UTILIZE, OR THE APPLICATION OF ANY POLICY SET FORTH HEREIN.

IN NO EVENT SHALL GANDI'S MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU TO GANDI FOR THE SERVICE DURING THE PRIOR TWELVE MONTHS, OR \$500, WHICHEVER IS LESS. TO THE EXTENT APPLICABLE LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, GANDI'S LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

Section 18. Force Majeure

Notwithstanding any other provision of this Agreement, neither party shall be held responsible for any loss, damage or delay suffered by the other party owing to any cause that is beyond the reasonable control of the defaulting party and cannot be attributed to negligence or willful nonperformance of its obligation. Such causes include, but are not limited to, wars, embargoes, riots, civil disturbances, acts of terrorism, fires, storms, floods, typhoons, earthquakes and other natural calamities, strikes and labor disputes, government acts and restrictions, failure of the public Internet (including Internet Service Providers and Internet accelerators) and other causes that cannot be overcome or prevented by due diligence. Either party wishing to invoke this Section shall give notice to the other party stating the relevant cause.

The defaulting party shall promptly resume performance of its obligations the moment such cause or causes cease to operate; provided, however, that if the condition continues for a period of more than seven (7) days, the party not claiming Force Majeure under this Section shall have the right to terminate this Agreement.

Section 19. Miscellaneous Provisions

No waiver of any provision in this Agreement shall be deemed a further or continuing waiver of such provision or any other provision. If any provision is found to be void, unlawful or unenforceable for any reason, that portion shall be deemed severable from these terms and shall not otherwise affect the validity and enforceability of any remaining provisions.

Gandi enters into this Agreement on its own behalf and on behalf of each of its worldwide affiliates. Accordingly, Gandi holds the benefit of and may enforce this Agreement on behalf of those affiliates. Gandi may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign this Agreement, or any part of this Agreement, to any other party. Any attempt by you to do so is void.

Section 20. Applicable law; Jurisdiction; Venue

All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement, or the rights and obligations of you or Gandi with respect your relationship, shall be governed by, and construed in accordance with, the substantive laws of the State of California, United States of America without regard to conflicts of law principles.

IN CASE OF DISPUTE, THE PARTIES IRREVOCABLY SUBMIT TO VENUE AND EXCLUSIVE PERSONAL JURISDICTION IN THE FEDERAL AND STATE COURTS IN THE STATE OF CALIFORNIA, FOR ANY DISPUTE ARISING OUT OF THIS AGREEMENT, AND WAIVE ALL OBJECTIONS TO JURISDICTION AND VENUE OF SUCH COURTS.

-- end of Gandi VPS Cloud Hosting Contract --

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