

Hosted Lab Servers

Terms and Conditions

These terms and conditions apply to all (each and every) servers purchased. Enabled IT Limited reserves the right to change the terms at any time. Please refer back to this page (www.enabled-it.co.uk/hostingtcs.pdf) as often as possible for the latest terms.

TERMS OF SERVICE

Where the context admits: "We", "Us" & "Our" includes Enabled IT Limited or any party acting on Enabled IT Limited's implicit instructions. "You" & "Your" includes the person purchasing the Services or any party acting on the customer's instructions. Under this Agreement We provide Internet connectivity services (the "Bandwidth"), the equipment (the "Server"), and the availability of space to store and operate such equipment (the "Space"), together comprising the dedicated server package under this Agreement (together, the "Services"). The relationship entered into between You and Us is governed by these following terms, which shall apply during, and where necessary after, the period of the commercial relationship between You and Us.

1. Server Hardware

- 1.1. We will be the owner of the Server.
- 1.2. The Server shall be installed and operated in the Space by Us. You will have no right of physical access to the Server or the Space.
- 1.3. We shall have no liability for any loss or damage to any data stored on the Server.
- 1.4. You acknowledge that, We cannot guarantee that the Server will be free from defects. Nor can We guarantee that it will operate uninterrupted or without failure. We shall use our reasonable endeavours to make available to You at all times the Services but We shall not, in any event, be liable for interruptions of service or down-time of the Server
- 1.5. Should We become aware of a Server fault, We will at our option repair the Server or provide an equivalent Server as a replacement as soon as practicably possible.
- 1.6. Any replacement Server will be provided in the default configuration as the Server was originally supplied. We do not warrant that any data, content or settings present on the original Server will be transferred to the replacement.

2. Network Connectivity & Bandwidth

- 2.1. We will provide a means for You to manage the VMWare ESXi component of the Server.
- 2.2. Any access to other networks through the Services must comply with the rules appropriate for those other networks.

3. Software

- 3.1. You are responsible for all software licenses
- 3.2. Any third party software is supplied to You on the basis of the relevant third party's license terms with which You agree to comply.
- 3.3 We offer no support or warranty for any software installed on your Server
- 3.4. You are solely responsible for virus scanning the Software
- 3.5. You acknowledge that software in general is not error-free, and agree that the existence of such errors will not constitute a breach of this Agreement.

4. Support & Management Services

- 4.1. We will install VMWare ESXi onto the Hardware in our standard configuration.
- 4.2. We will endeavour to apply security patches or take mitigating action such as blocking certain network traffic to maintain the integrity of the Server when We are made aware of a security vulnerability in Software installed as standard which We deem a threat considering the intended use of the Services for web site hosting, however We do not warrant that the Software will be free from defects or vulnerabilities nor that the Server will be free from unauthorised users or hackers.

4.3. We are not obliged to install onto the Server any additional software for You or modify the configuration of existing software from its default. You acknowledge that should We agree to do so, a charge may be made to cover employee time.

4.4. We provide technical support relating to the Server physically functioning. We do not offer technical support for applications.

4.5. We do not provide technical support for Your customers.

4.6. Our obligation to provide support and management services will not extend to:

4.6.1. Software or systems not installed as standard by Us.

4.6.2. Software or systems configured or modified by You.

4.6.3. Correction of faults arising from Your failure to comply with instructions or recommendations provided by Us directly or through documentation and manuals.

4.6.4. Rectification of lost or corrupted data.

4.7. We may at any time and from time to time improve, correct or otherwise modify all or any of the Services (including substituting Software and/or Server with software or equipment of similar specification) provided that such modification does not materially affect provision of the Services to the You. We will endeavour to give You reasonable notice of any such modification, where this is reasonably practicable.

5. Data Backup

5.1. In the event that You purchase a data backup product We will endeavour to make backups of the data stored on the Server and make them available to You in accordance with the specification of the data backup product. However We do not warrant that any data will be backed up correctly, nor that any successful restoration of data will be possible.

5.2. Regardless of whether You purchase a data backup product, We shall have no liability for any loss or damage to any data stored on the Server or backup mediums.

6. Use Of The Services

6.1. You shall keep secure any identification, password and other confidential information relating to Your account or the Services and shall notify Us immediately of any known or suspected unauthorised use of the Services or breach of security, including but not limited to loss, theft or unauthorised disclosure of Your password or other security information.

6.2. You shall observe the procedures which We may from time to time prescribe and shall make no use of the Services which is detrimental to Our other customers.

6.3. In the case of an individual User, You warrant that You are at least 18 years of age and if the User is a company, You warrant that the Services will not be used by anyone under the age of 18 years.

6.4. You are solely responsible for the content of any postings, data or transmissions using the Services or any other use of the Services by You or by any person or entity.

6.5. You represent, undertake and warrant to Us that neither You or any person or entity will use the Services for illegal, disruptive or objectionable purposes. In particular, You represent, warrant and undertake to Us that.

6.5.1. You will not use the Services in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will You authorise or permit any other person to do so.

6.5.2. You will not upload, post, link to or transmit:

6.5.2.1. any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, blasphemous, profane or otherwise objectionable in any way.

6.5.2.2. any material containing a virus or other hostile computer program.

6.5.2.3. any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

6.5.3. All email sent using the Services, or which refers to content hosted on the Services will be in accordance with applicable legislation (including data protection and electronic communications legislation).

6.5.4. You will not use the Services in any manner which interferes with, or disrupts, other network users, services or equipment including, without limitation, unsolicited advertising or chain letters, inappropriate news group or forum posts, wrongly impersonating another user and falsifying one's network identity.

6.5.5. You will not use the Services to make or attempt to make unauthorised entry to any other machine accessible location, via the network.

6.6. If We have reasonable grounds to believe that You are or have been utilising the Services for any such illegal, disruptive or objectionable purpose, We may immediately, without prior notice to You:

6.6.1. Suspend the Services.

6.6.2. Terminate this Agreement.

6.6.3. Amend, remove from the Server or prevent access to the offending material or content.

6.6.4. Commence financial proceedings against You for any damages or reputational damage caused.

6.7. You shall defend, indemnify and hold harmless Us from and against all liabilities and costs (including reasonable solicitor's fees and litigation expenses) from any and all claims by any entity arising out of Your use of the Services, including those without consent.

7. Service Level Agreement

- 7.1. The Service Level Agreement, hereinafter referred to as the SLA sets out our aims with regard to the level of service provided.
- 7.2. Our failure to provide meet an aim set out in the SLA will not constitute a breach of this contract.
- 7.3. Events that Enabled IT hold no responsibility for include but are not limited to:
- 7.3.1. A problem in Your access provider's network or that of their upstream providers which prevents You from accessing the Enabled IT Limited network.
- 7.3.2. A problem with Your Server's hardware or software which renders it or an application or service on it inoperable.
- 7.3.3. Hardware or Software problems on Your client device
- 7.3.4. Your Security Controls which prevent access to your hosted Server (such as firewalls or anti-virus)
- 7.4. Enabled IT have no responsibility or obligation as to the performance of Your server and poor server performance will not constitute a breach of this contract.
- 7.5. In the event that You are unable to use your server for a period of time, Enabled IT do not offer any service credits. However, if You wish to make a claim for a service, You will notify Us including full details of and the time at which the incident occurred within 7 days of the incident to which the claim relates occurring.
- 7.6. We reserve the right to determine whether any service credit is due.
- 7.7. Should We determine that a service credit is due, it will be provided in the form of additional days of service up to a maximum of 30 days in any 30 day period. Only charges for the basic Server rental will be waived as a result of a service credit under the SLA.

8. Payment

- 8.1. All charges payable by You for the Services shall be in accordance with the scale of charges and rates published from time to time by Us on our web site, errors and omissions excepted and shall be due and payable in advance of provision of the Services.
- 8.2. We reserve the right to change pricing at any time although all pricing is guaranteed for the period of pre payment.
- 8.3. Payment is due each month following the date the Services were established until closure notice is given in accordance with 11.6. If You choose to pay by credit or debit card You authorise Enabled IT Limited to debit Your account renewal fees from Your card via Paypal.
- 8.4. All payments must be in UK Pounds Sterling.
- 8.5. Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, We shall be entitled but not obliged forthwith to suspend the provision of Services to You.
- 8.6. If you cancel your Subscription after the 7 day trial period, but before the contracted end date of your service, You will be liable to pay the outstanding balance of Your Subscription until the contracted end date.

9. Termination And Refunds

- 9.1. We shall be entitled to suspend the Services and/or terminate this Agreement forthwith without notice to You If You:
- 9.1.1. fail to pay any sums due to Us as they fall due.
- 9.1.2. break any of these terms and conditions.
- 9.1.3. are a company and You go into liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with You creditors.
- 9.2. Our employees have every right and expectation to work in an atmosphere free of abuse, intimidation and harassment from our clients. Therefore, abuse towards our staff in the form of verbal or written abuse (including abuse via email) or anything else that we deem to be offensive may result in cancellation of your account with immediate effect and without compensation or refund for lost periods of service.
- 9.3. No refunds will be made under any circumstances for Services suspended in accordance with 11.1 and 9.2.
- 9.4. Without prejudice to Our other rights and remedies, We may at Our sole discretion suspend the provision of the whole or any part of the Services (temporarily or permanently) and will have no liability to provide the Services on the occurrence of any of the following events:
- 9.4.1. Notified or unscheduled upgrade or maintenance of Our IT systems.
- 9.4.2. Issue by any competent authority of an order which is binding on Us which affects the Services.
- 9.4.3. We deem at our sole discretion that the network or system resources used by You in relation to the Services warrants suspension to protect the services provided by Us to all or any of Our other customers.
- 9.5. We reserve the right to suspend the Services and/or terminate this Agreement at any time. In the event of this You will be entitled to a pro rata refund based upon the remaining period of prepayment.
- 9.6. You may cancel the Services before the 7 day trial period ends at any time. To do so You must request cancellation of the Services in writing including Your account username and password. You may also cancel your subscription within Paypal before the 7 day trial period concludes. If you cancel your subscription after the 7 day trial period, monies will be collected from you as per 10.6
- 9.7. On termination of this Agreement or suspension of the Services We shall be entitled immediately to stop

access to You Server and to remove all data located on the Server.

10. Indemnity

10.1. You shall indemnify Us and keep Us indemnified and hold Us harmless from and against any breach by You of these terms of business and any claim brought against Us by a third party resulting from the provision of Services by Us to You and Your use of the Services (including use without Your consent) including without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by Us in consequences of You breach or non-observance of any of the terms of this Agreement.

11. Limitation Of Liability

11.1. All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded to the extent applicable under UK law, subject always to sub clause 13.2.

11.2. Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

11.3. Our total aggregate liability to You for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by You in respect of the Services which are the subject of any such claim.

11.4. In any event no claim shall be brought unless You have notified Us of the claim within one month of it arising.

11.5. In no event shall We be liable to You for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

12. Force Majeure

12.1. We shall have no liability to You in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of force majeure which means, circumstances beyond our reasonable control including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, unauthorised use or access to the IT systems, explosion, flood, epidemic, strikes and other industrial disputes (in each case, whether or not relating to Our workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.

13. Notices

13.1. Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error-free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

14. Non-Waiver

14.1. Any forbearance or failure by Us to enforce a contractual provision to which You are subject shall not affect our right to require such performance at any subsequent time, nor shall the waiver or forbearance by Us of any breach of any provisions of the agreement herein be taken to be or held to be a waiver of the provision or provisions itself of themselves.

15. Law

15.1. This Agreement shall be governed by and construed in accordance with English law and You hereby submit to the exclusive jurisdiction of the English courts.

16. Headings

16.1. Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

17. Entire Agreement

17.1. These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between Us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between Us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, You confirm that You have not relied on any representation other than those expressly stated in these terms and conditions and You agree that You shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.