



**DEDICATED SYSTEM HOSTING
AGREEMENT**

BETWEEN

RAPIDHOST LIMITED

AND

<COMPANY NAME>

Dedicated System Hosting Agreement

THIS AGREEMENT is dated <date> and is made between

(1) RapidHost being RapidHost Ltd. of Rapid House, 27 Little Marlow Road, Marlow, Buckinghamshire, SL7 1HA, United Kingdom

and

(2) The Customer being <company name and address>

IT IS AGREED as follows:

1. Definitions

In this Agreement (which expression shall be deemed to include the Schedules) the following expressions shall have the following meanings:

“Hosted System’s Hardware” means the physical computer and networking equipment supplied by RapidHost.

“Price” shall include the matters set out in clause 4.1 which shall be charged on the basis of the prices set out in Schedule 1 to this agreement.

“Schedule” means a schedule to this agreement.

“Servers” means RapidHost’s servers and includes RapidHost’s entire software and hardware installation and all plant and machinery that serves it.

“Services” means all of the services supplied under the terms of this Agreement.

2. Agreement and Period

In consideration of the payment by the Customer to RapidHost of the Price and subject to the terms of this Agreement RapidHost hereby agrees to provide the Services to the Customer from the date that the Hosted System’s Hardware is accessible via the Internet to the Customer for the period set out in Schedule 1.

At the end of the period in Schedule 1, RapidHost may, at its discretion, offer to continue to supply the Services to the Customer at the same Price on a rolling contract basis for the next, and subsequent, payment periods until notice of termination is received. For clarity, if the payment period is monthly then the service will be supplied on a monthly rolling contract basis, similarly on an annual rolling contract basis for annual payment periods. The period of notice shall be one month.

3. Representative liaison

With effect from the date of this Agreement RapidHost and the Customer shall each nominate a representative who shall be authorised to make decisions relating to this Agreement and who shall (in each case) be responsible for all liaison with the other party.

4. Price and payment

4.1 The Price shall include:

4.1.1 the total sum payable for the Services set out in Schedule 1 and

4.1.2 any other sums due to RapidHost for work under this Agreement.

4.2 The Price shall be paid by instalments in advance with the addition of UK value added tax, as set out in Schedule1.

4.3 Payment by the Customer shall be due within 30 days of the date of issue of such invoice.

4.4 Without prejudice to any other remedies it may have under this Agreement or otherwise at law RapidHost reserves the right to charge interest from the Customer in respect of the late payment of any sums due under this Agreement (both before and after judgment) at the rate of 4 per cent above the base rate from time to time of the Bank of England from the due date until receipt of payment.

5. Bandwidth

RapidHost has agreed to monitor bandwidth use and should a restriction be set out in Schedule 1 to advise the Customer of any use in excess of such bandwidth.

6. Duration and termination

6.1 This Agreement may be terminated by either party by notice in writing:

6.1.1 if the other commits any material breach of any term of this Agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it; or

6.1.2 if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).

6.2 Within 14 days after the date of termination of this Agreement for whatever reason RapidHost, unless otherwise agreed in writing by RapidHost, shall destroy all removable magnetic media, digital and (if any) hard copy forms of the data on the hosted system's hardware.

6.3 Any termination of this Agreement shall be without prejudice to any other rights or remedies to which a party may be entitled.

7. Confidentiality

7.1 The parties are aware that during the period of this Agreement (and prior thereto) they will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs.

7.2 The parties hereby undertake that they will not divulge to any person whatever or otherwise make use of any

trade secret or confidential information other than strictly for the purposes of this Agreement.

7.3 Both RapidHost and the Customer hereby undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this clause 7 and to take all such reasonable steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with these provisions.

7.4 Each of RapidHost and the Customer hereby undertakes one to the other that for the period of 12 months following termination of this Agreement (howsoever arising) they will not directly or indirectly and whether for themselves or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.

7.5 The provisions of clause 7.4 shall not apply to one of them if the other enters into receivership or liquidation.

8. Third party software rights

RapidHost undertakes to obtain all necessary licences required to provide the Services and to indemnify the Customer against all costs, claims, expenses, liabilities, damages and other claims or losses arising from any failure to do so.

9. Customer's undertakings responsibilities and indemnities

9.1 The Customer:

9.1.1 undertakes to pay the Price and charges specified herein within terms as specified in Clauses 4.2 and 4.3 and Schedule 1.

9.1.2 is solely responsible for the accuracy, legality, currency and compliance of any of its material and will be solely liable for false, misleading, inaccurate, infringing or other actionable material contained or referred to therein;

9.1.3 is solely responsible for maintaining the confidentiality and security of its hosted system accounts and usage including use of its unique logon ID; and

9.1.4 acknowledge and agrees that RapidHost may be required by a law enforcement agency to monitor database system content and traffic and if necessary give evidence of the same together with use of the logon ID to support or defend any dispute or actionable cause or matter which arises in relation to this.

9.2 Each party agrees to indemnify the other against all costs, claims and expense arising directly or indirectly from:

9.2.1 the other's failure to comply with the law of any country;

9.2.2 the other's breach of the intellectual property rights of any third party;

9.2.3 the actions of the other party (its employees or representatives) at the premises of RapidHost;

9.3 Each Party undertakes to use reasonable commercial endeavours to advise the other of any of the circumstances set out in clause 9.2 as soon as reasonably practical upon becoming aware of any such circumstance.

10. Contact details

Each party undertakes to provide to the other its current land address, email address, fax and telephone numbers as often as they are changed.

11. Interruption to the Service

11.1 RapidHost shall give to the Customer reasonable notice if it is necessary for RapidHost to interrupt the Services for any reason or where the Services may also be interrupted for reasons beyond the control of RapidHost.

11.2 The Customer agrees that RapidHost shall not be liable to it for any loss, damage, liability claim, expense or cost whatsoever whether foreseeable or not, arising as a result of interruption to or suspension of the Services under this agreement.

11.3 The Customer acknowledges that services may also be interrupted for reasons beyond the control of RapidHost.

12. Network Availability

12.1 RapidHost aim to deliver the highest possible levels of network uptime, and offer a 100% availability guarantee as follows.

12.1.1 If our internet connectivity to your server(s) fails to meet 100% availability within the previous 30 days (excluding scheduled maintenance time), then the Customer eligible to claim a refund equivalent to one day's service fee for every hour of network downtime, up to a maximum of 15 days of service fee.

12.1.2 For the purpose of this guarantee, RapidHost's network is defined as the central communications infrastructure excluding the Customer's server hardware and the software and services running on your server. The duration of network unavailability is calculated from when the Customer formally notifies RapidHost of a network failure (using RapidHost's standard support procedures) to the time when network connectivity is restored, in that it responds correctly to an external ping.

12.1.3 Notification of network connectivity failure must take place at the time of the problem and not in retrospect.

12.1.4 This guarantee excludes network unavailability as the result of: i.) scheduled maintenance ii.) circumstances that are beyond RapidHost's reasonable control, such as malicious denial of service attacks, other types of network attack, civil disturbance, terrorist activity, government actions and iii) breaking our Terms Of Service or Acceptable Use Policy.

13. Privacy policy exception

Each party agrees that the other may disclose the Customer's information including assigned IP numbers, account history, account use, etc. to any judicial or proper legal authority who makes a written request without further consent or notification to the Customer.

14. System and Network Security

14.1 The Customer agrees that it will not, and will not allow any other person to, violate or attempt to violate any aspect of the security of the systems or equipment (including without limit the Servers) of RapidHost.

14.2 The Customer understands that any such violation is unlawful in many jurisdictions and that any contravention of law may result in criminal prosecution.

14.3 A non-exhaustive list of examples of violations is:

14.3.1 accessing data unlawfully or without consent;

14.3.2 attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;

14.3.3 attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing";

14.3.4 forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting;

14.3.5 taking any action in order to obtain services to which the Customer is not entitled.

15. Representation

RapidHost hereby represents that based on the information provided by the Customer leading up to and at the start of this Agreement, in RapidHost's opinion, the Services are suitable for the Customer's use. Without prejudice to the foregoing RapidHost accepts no responsibility for:

15.3.1 any firewall provision not specified in the Services;

15.3.2 any malfunction in any software supplied by the Customer;

15.3.3 any aspect whatever of the content or functionality of software applications, services or information on the Hosted System's Hardware.

16. Limitation of liability

16.1 Notwithstanding anything to the contrary in this Agreement the following provisions set out RapidHost's entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:

16.1.1 any breach of its contractual obligations arising under this Agreement; and

16.1.2 any representation, statement or tortious act or omission including without limitation negligence arising under or in connection with this Agreement and the Customer's attention is drawn to these provisions.

16.2 In no circumstances shall RapidHost be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof:

(i) for any increased costs or expenses; or

(ii) for any loss of profit, business, contracts, revenues or anticipated savings; or

(iii) for any special, indirect or consequential damage or loss of any nature whatsoever.

16.3 In any event, notwithstanding anything contained in this Agreement RapidHost's liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof arising by reason of or in connection with this Agreement (except in relation to death or personal injury caused to the Customer by the wilful act of RapidHost or its employees while acting in the course of their employment) shall be limited to the aggregate amount of the Price paid during the period of two (2) calendar months in which the circumstances giving rise to the claim for liability occurred.

16.4 With the sole exception (where the Customer is a natural person) of liability for death or personal injury suffered by the Customer and caused by the wilful act or negligence of RapidHost as defined in section 1 of the Unfair Contract Terms Act 1977 RapidHost's liability under clauses 16.2 and 16.3 shall be to the exclusion of any other liability to the Customer whether contractual, tortious or otherwise for any act or omission under or breach of this Agreement by RapidHost (including without limitation its employees, directors, representatives and agents).

16.5 If a number of breaches of this Agreement by RapidHost give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this agreement.

16.6 For the avoidance of doubt RapidHost does not exclude liability for death or personal injury to the extent that the same arises as a result of the wilful default or negligence of RapidHost its employees agents or authorised representatives.

16.7 The Customer hereby agrees to give RapidHost not less than 72 hours in which to remedy any breach of this agreement by RapidHost hereunder.

16.8 Nothing in this paragraph shall confer any right or remedy upon the Customer to which he would not otherwise be legally entitled.

17. Copyright, patents, trademarks and other intellectual property rights

17.1 The Customer acknowledges that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with the Hosted System, the Services and any other services provided hereunder are and shall remain (as between the parties hereto) the sole property of RapidHost.

17.2 In the event that new inventions, designs or processes are evolved by RapidHost in the performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of RapidHost unless otherwise agreed in writing by RapidHost.

18. Support and Maintenance

RapidHost will provide provision of support and maintenance of the Hosted System and connections to the Internet as specified in schedule 1.

19. No duty to monitor

RapidHost is under no obligation to monitor or police Internet-related activities.

20. Visitors to RapidHost site

20.1 Admittance to the office or hosting premises of RapidHost shall be at the reasonable discretion of RapidHost and subject to whatever terms it shall from time to time reasonably impose.

20.2 RapidHost shall not be responsible for the actions of the Customer at RapidHost's office or hosting premises.

21. Force Majeure

Neither party shall be liable to the other party in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of that party which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority, breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

22. Entire agreement

22.1 This Agreement (including the documents and instruments referred to herein) supersedes all prior representations, arrangements, understandings and agreements between the parties (whether written or oral relating to the subject matter hereof and sets forth the entire complete and exclusive agreement and understanding between the parties hereto relating to the subject matter hereof.

22.2 Each party warrants to the other that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.

22.3 Without prejudice to the generality of the foregoing, save as expressly provided in this Agreement RapidHost gives no promise, warranty, undertaking or representation to the Customer.

22.4 Each party further agrees and undertakes to the other that its remedies for any breach of this Agreement shall be solely for breach of contract, which remedies shall be subject to and in accordance with the provisions of this Agreement.

22.5 No provision of this Agreement shall operate so as to exclude any liability of one of the parties in respect of a fraudulent misrepresentation made by that party to the other, or to restrict or exclude any remedy which the other party may have in respect of such misrepresentation.

23. Successors to the agreement

23.1 The benefit and obligations of this Agreement shall be binding on any successor in title.

23.2 Neither party shall be entitled to assign the benefits of this Agreement or all or any of their rights and obligations hereunder without the prior written consent of the other.

24. Contract is divisible

Each sub paragraph in this Agreement is independent and severable from each other paragraph and enforceable accordingly. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

25. Notices

Any notice to be served on either of the parties by the other shall be sent by first class post or pre paid recorded delivery or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct number.

AGREED TERMS

Signed by:

On behalf of: <company name>

Position:

Date:

Signed by:

On behalf of: RapidHost Limited

Position:

Date:

SCHEDULE 1

<Term of contract (1, 2 or 3 years), list of product/services (including any bandwidth restrictions), fees plus VAT and period of payments (monthly, annually etc.)>

CONTACT INFORMATION

Please provide information for your administration, billing and technical contacts. Plus any others you feel RapidHost should know about in connection with this service. In addition, RapidHost would appreciate knowing the mobile telephone number of the Customer's technical contacts in case of emergency.

Contact 1

Name:

Role:

Email:

Phone:

Contact 2

Name:

Role:

Email:

Phone:

Contact 3

Name:

Role:

Email:

Phone:

Contact 4

Name:

Role:

Email:

Phone: