

## 1. DEFINITIONS

- 1.1 Definitions in the Supplier's Core Terms shall be inherited and therefore apply to words and phrases in these Supplementary Terms;
- 1.2 In these Supplementary Terms, these additional words and phrases have specific meanings:  
**"Control Panel"** means the online system through which the Resources are administered by the Customer;  
**"Client"** means the individual to whom, or organisation to which, the Customer assigns its Resources;  
**"Plan"** means the shared web hosting plan selected by the Customer upon Application;  
**"Resources"** means a portion Server resources allocated to the Customer;  
**"Supplementary Terms"** means these specific Terms & Conditions;

## 2. SERVICES

- 2.1 The Supplier shall allocate Resources dependent on the Plan selected by the Customer during Application.
- 2.2 The Supplier shall notify the Customer when these Resources are available for use.
- 2.3 The Supplier shall provide the necessary technical information to allow the Customer to access, connect to and use the Resources.
- 2.4 The Customer is not permitted to physically access the Server on which the Resources are stored, or access the Data Centre in which the Server is stored without express written permission from the Supplier.

## 3. SUPPORT, MAINTENANCE & SERVICE LEVEL AGREEMENT

- 3.1 The Supplier shall keep the Resources in a reasonable operating condition.
- 3.2 The Supplier shall monitor the performance of its Servers, and where possible will endeavour to resolve reductions in performance within a reasonable time frame.
- 3.3 The Customer acknowledges that occasional reduction in the performance of the Services normal and to be expected due to the unpredictability of both usage and conduct of other customers. The Supplier is therefore not liable for any reduction in performance of the Services.
- 3.4 Occasional required maintenance performed from time to time by the Supplier and/or any subcontractors may affect the availability of Services to the Customer. The Supplier will endeavour to provide as much notice as is possible in all circumstances, subject to procedures required in the event of an emergency.
- 3.5 Should the level of availability fall below pre-defined levels, the Supplier shall refund the Customer for any Charges paid for that Monthly period. The refund shall be calculated according to the following:

100%	No Credit
99.9%	10% Credit
99.5%	15% Credit
99%	25% Credit
98%	100% Credit

- 3.5.2 This guarantee shall apply only when the following do not apply:
- 3.5.2.1 Circumstances beyond the Supplier's reasonable control, including, without limitation, acts of any government body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this agreement.
- 3.5.2.2 Failure of access circuits to the Supplier's network, unless such failure is caused by the Supplier.
- 3.5.2.3 Scheduled maintenance, emergency maintenance and upgrades.
- 3.5.2.4 DNS issues outside the direct control of the Supplier.
- 3.5.2.5 Issues with FTP, POP, IMAP, SMTP or Control Panel access.
- 3.5.2.6 Customer's acts or omissions (or acts or omissions of others engaged or authorised by the Customer), including custom scripting or coding (e.g. CGI, Perl, HTML, PHP, and all or any related or equivalent languages/applications), any negligence, wilful

- misconduct, or use of the Services in breach of any of the Supplier's Terms or Supplementary Terms.
- 3.5.2.7 E-mail or webmail delivery or transmission.
- 3.5.2.8 DNS Propagation, or local DNS caching.
- 3.5.2.9 Technical issues elsewhere on the Internet that hinder access to the Service.

- 3.5.3 The Supplier will guarantee only those areas considered under its direct control, including Servers and network equipment.
- 3.6 To receive a refund under these policies, the Customer should contact the Supplier in writing, by fax or by raising a ticket with our Accounts team at my.kualo.com. Each request in connection with this Service Level Agreement must include the dates and times of Customer Resource unavailability, and must be received by the Supplier by the 10<sup>th</sup> day of the following said unavailability. In the event of the unavailability being confirmed by the Supplier, credits will be applied to the Customer's account within two billing cycles.

## 4. RIGHT TO RESALE

- 4.1 In order to resell its Resources, the Customer acknowledges and agrees that its Clients are its own responsibility.
- 4.2 The Customer agrees that reselling its Resources is only permitted on Plans which are specifically designed for resale, which are limited to the rOne, rTwo, rThree and rFour plans as designated on the Supplier's web site.
- 4.3 The Customer agrees to:
- 4.3.1 Procure that its Clients enter into a binding agreement that contains provisions consistent with section 5, and allows the Customer to immediately terminate the agreement for breaches of that agreement;
- 4.3.2 Handle all matters relating to technical support for its Clients itself, without referring its Customers to the Supplier for this purpose;
- 4.3.3 Pass on to Clients, in its own name, any announcements that the Supplier posts via its announcement system that it requests to be forwarded to such Clients.
- 4.4 The Customer agrees to fully indemnify and keep the Supplier fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by the Supplier and arising from:
- 4.4.1 The use or misuse of the Resources by the Customers Clients;
- 4.4.2 Any claim brought against the Supplier by any third party alleging that its Intellectual Property Rights are infringed by the Clients use of the Resources.

## 5. ACCEPTABLE USE POLICY

- 5.1 The Customer agrees to:
- 5.1.1 Immediately notify the Supplier upon awareness of any unauthorised use of Resources.
- 5.1.2 Not use Resources, or allow others to do so, for any unlawful activity or activity that in the opinion of the Supplier may bring harm to the Supplier or bring the Supplier into disrepute, including the storage of:
- 5.1.2.1 Material that infringes any rights (including Intellectual Property Rights) of any third party.
- 5.1.2.2 Material the Supplier may judge to be threatening or obscene.
- 5.1.2.3 Material that encourages criminal acts.
- 5.1.2.4 Pornography or sex-related merchandising, including sites that infer sexual content.
- 5.1.2.5 Material containing any virus, worm or other harmful code.
- 5.1.2.6 Pirated software or files.
- 5.1.2.7 Links to, frames or any other means of displaying or connecting to any items listed in Clauses 5.1.2.1 to 5.1.2.6.
- 5.1.3 Abide by our "Resource Usage Policy" which is available at [www.kualo.com/webhosting/resource-usage-policy](http://www.kualo.com/webhosting/resource-usage-policy). The Customer agrees that the Supplier may update this policy without notice, and that it has the final say on what constitutes acceptable use of its Resources.
- 5.2 The Customer accepts full responsibility and liability for all activities conducted using its Resources.
- 5.3 The Supplier will be the sole arbitrator of what constitutes a violation of these policies, and the Customer acknowledges that its Service may be suspended or cancelled in the event of a violation or suspected violation of these policies.
- 5.4 Accounts cancelled due to violation of any of these policies may be

liable, at the Supplier's sole discretion, to an administration fee not to exceed £500.00 Sterling.

## 6. "UNLIMITED" USE POLICY & DEFINITIONS

- 6.1 Certain Plans make reference to the term 'unlimited' when referring to disk space, bandwidth or features. The Supplier will make every commercially reasonable effort to provide the Customer with all the storage, bandwidth or other advertised features that the Customer needs to successfully run its web site, providing it is in compliance with the Supplier's Acceptable Use Policy as defined in section 5.
- 6.2 The Supplier employs various mechanisms to protect its Customer's and Resources from abuse. By offering "unlimited" features it is not intended that the actions of a few Customers can adversely affect the experience of other Customers. The service provided is a shared web hosting service, which means that many web sites are hosted on the same server and share the same server resources such as, but not limited to, the server's memory and CPU. The Supplier's shared hosting service is designed to meet the needs of the vast majority of small to medium sized businesses hosting requirements. It is not designed to meet the needs of large enterprises or web applications which may be better suited to dedicated server hosting. The Supplier will make every effort to accommodate Customers who use larger than typical share of disk space, bandwidth or resources in line with the Acceptable Usage Policy. However to ensure a consistent service to all Customers, the Supplier does have automated mechanisms to protect Customers from any individual site growing too quickly and adversely affecting the service received by other Customers. The Supplier is entitled to suspend service to any Customer whose requirements grow too quickly until the Supplier can evaluate their new requirements.
- 6.3 On some non-reseller Plans the Supplier does not set a fixed limit on the number of web sites a customer may host within their Plan. The Customer acknowledges that each web site they add within their plan are still a part of it's Resources. The Resource Usage Policy applies to the entire Resources and all web sites hosted within it, as a collective, and not to each web site hosted individually.
- 6.4 Where the Customer has a reseller Plan, the Resource Usage Policy applies individually to each resold web site within their Plan.