

# Terms of Service

By registering and utilising our services you agree to the following terms and conditions outlined in this document which is effective as of the date you purchase services from Fraction Servers. This agreement sets forth the terms and conditions of your use of Fraction Server's dedicated server services (collectively, the "Services") and represents the entire agreement between you and Fraction Servers relating to the Services.

By purchasing the Services, you acknowledge and agree that you have read and understand to be bound by all the terms and conditions of this agreement, along with any new, different or additional terms, conditions or policies that Fraction Servers may establish and post on its website from time to time.

## 1 - The Service

**1.1** Fraction Servers reserve the right to decline services and goods to the customer.

**1.2** Fraction Servers reserves the right to perform notified maintenance on all services provided to the customer and wherever possible will provide advance notice of such maintenance.

**1.3** The customer must ensure they provide Fraction Servers with a valid name, address, telephone and email contact address. The customer must inform Fraction Servers of any change in their contact details within three days of any changes.

**1.4** The customer must ensure his usage of the service provided by Fraction Servers is within the guidelines set out in the Fraction Servers Acceptable Usage Policy or AUP.

**1.5** Unless otherwise stated the service Fraction Servers provides is unmanaged.

**1.6** Any problems caused by the customer to service, (which include, but are not limited to, deletion of necessary operating system files, accidental or intentional infection by a virus/Trojan) may result in extra charges to the customer.

**1.7** Fraction Servers shall have the right upon prior written notice to relocate the customer equipment. In the event of an emergency, Fraction Servers may relocate the customer equipment within such time as may be reasonable and without prior written notice as the circumstances reasonably warrant.

## 2 - Payment and Termination

**2.1** The Customer shall pay the charges for the services set out when signing up for the services on the order form.

**2.2** The customer is entering a thirty day monthly rolling contract unless specified in an additional service agreement between Fraction Servers and the customer.

**2.3** The customer shall provide no less than three days cancellation notice before their billing anniversary date. The customer will provide this notification via email to [cancellations@fractionservers.com](mailto:cancellations@fractionservers.com) or by recorded post to Fraction Servers registered office address or by means of a cancellation support ticket through the customers control panel account at <https://control.fractionservers.com>.

**2.4** Fraction Servers shall be entitled thirty days before and at any time after the expiry of the service term to increase service charges for a service upon thirty days written notice to the customer.

**2.5** Fraction Servers shall invoice the customer fourteen days before their service renewal date unless specified in an alternative agreement.

**2.6** Fraction Servers requires all invoices to be paid within fourteen days of creation unless another agreement is in place between Fraction Servers and the customer.

**2.7** Fraction Servers reserves the right to suspend and/or disconnect any services for a customer with invoices that have not been paid by their due date.

**2.8** Fraction Servers reserves the right to prohibit the customer access to their equipment or data if the customer has overdue invoices.

**2.9** Interest shall accrue on overdue invoices from the due date until payment (whether before or after judgment) at the rate of 1.5% per month. Interest shall accrue not withstanding termination of this agreement or any service for whatever reason.

**2.10** All sums due to Fraction Servers are exclusive of value added tax and any other applicable sales tax or duty which shall be invoiced and payable at the then prevailing rate.

**2.11** The customer hereby acknowledges and agrees that its obligations to pay all amounts and charges due hereunder, and the rights of Fraction Servers to such payments shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, including, without limitation, any set-off, abatement, counterclaim, suspension, recoupment, reductions, rescission, defence or other right or claim that customer may have against Fraction Servers.

**2.12** Upon cancellation of service Fraction Servers will not be able to provide the customer with any refund for services which have been provisioned to the customer.

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**2.13** The customer shall submit any billing disputes to Fraction Servers no later than three days of an invoice due date.

**2.14** Customers will be notified by email when they reach eighty percent of their monthly data transfer allowance. Fraction Servers cannot guarantee delivery of this email and the customer should check their bandwidth usage via the graphs and tables provided in their control panel account with Fraction Servers.

**2.15** Customers that exceed their monthly data transfer limit are automatically charged at a rate of £0.01/GB of data transfer.

### **3 – Service Suspension**

**3.1** Fraction Servers may, at its sole discretion and without prejudice to any right which it might have to terminate this agreement or a service, elect to suspend forthwith provision of any service until further notice in the event that:

- a) Fraction Servers is entitled to terminate this agreement or such service; or
- b) Fraction Servers is obliged to comply with an order, instruction or request of government, an emergency service organisation or other competent administrative authority which affects its ability to provide the service.

**3.2** Fraction Servers may from time to time suspend a service in accordance with any applicable SLA to carry out any necessary maintenance work to the network or the service equipment.

**3.3** In the event the suspension is implemented as a consequence of the breach, fault, act or omission of the customer, the customer shall pay Fraction Servers all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the service and Fraction Servers may recover any other losses suffered as a result of such breach, fault, act or omission.

**3.4** Fraction Servers shall not be liable for any loss, damage or inconvenience suffered by the customer as a result of any suspension pursuant to clause 3.1 save where the circumstances set out in clause 3.1 are solely attributable to the negligence of Fraction Servers.

**3.5** Any communications between Fraction Servers and the customer are strictly confidential. Disclosure of telephone calls, quotations, support tickets or email communication between the parties to media organisations, other businesses, discussion forums or any other third parties is strictly prohibited and may result in immediate service suspension.

## 4 - Indemnity

**4.1** The customer agrees to fully indemnify and keep Fraction Servers, its subsidiaries, affiliates, officers, partners, employees and agents fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by it or them and arising from any of the following:

- a) The customer's breach of the contract and/or this agreement or its negligence or other act, omission or default;
- b) The operation or break down of any equipment or software owned or used by the customer but not the hardware and/or software;
- c) The customer's use or misuse of the services;
- d) The customer infringing (whether innocently or knowingly) third party rights (including without limit IPRs).

## 5 - Disclaimer

**5.1** The customer acknowledges that the allocation of risk in the contract reflects the price paid for the services, hardware and software and that it is not within the control of Fraction Servers how or for what purposes they are used. If any exclusion or limit of liability in the contract is held to be invalid and Fraction Servers becomes liable for loss or damage that may lawfully be limited then such liability shall be limited to the amount paid by the customer for the services.

**5.2** Fraction Servers shall have no liability to the customer for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the customer or on its behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by the customer or on its behalf. No action, claim or demand arising out of or in connection with the contract or this agreement may be brought by the customer against Fraction Servers more than one year after the cause of action has occurred.

**5.3** Fraction Servers is not responsible for any delay, malfunction, non-performance and/or other degradation of performance of any of the services, hardware or software caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by the customer whether or not beyond those already supplied.

**5.4** Neither Fraction Servers nor anyone else who has been involved in the creation, production or supply of the services, hardware or software shall be liable to the customer or any other person for any loss in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof by reason of or in connection with this agreement, the contract or the services, hardware or software for any:

- a) economic loss of any kind whatsoever, or
- b) loss of profit, data, business contracts, revenues or anticipated savings, or
- c) damage to the customer's reputation or goodwill, or
- d) loss resulting from any claim made by any third party, or
- e) special, indirect or consequential loss or damage of any nature whatsoever.

## 6 - Uptime Guarantee and Service Level Agreement (SLA)

"Uptime" refers to the amount of time the Services are available, as measured solely and only by Fraction Servers internal monitoring systems. "Downtime" refers to the amount of time the Services are unavailable, as measured solely and only by Fraction Servers internal monitoring systems.

**6.1** Fraction Servers guarantees that its networking and connectivity services will be available 99.99% of the time. In the event such level of service is not provided, Fraction Servers will credit the customer's account in an amount as determined in the chart below, reflecting credit percentages of the monthly fees paid for the services, but not payments made for any of the following products and services: domain name registration, software licenses, IP address charges, set up fees, shipping and handling, SSL certificate fees, labour charges, and other services which are unrelated to uptime.

99.1% to 99.9% will result in a credit of 5%  
98% to 99% will result in a credit of 10%  
95% to 97.9% will result in a credit of 25%  
90% to 94.9% will result in a credit of 50%  
89% or below will result in a credit of 100%

**6.2** The customer must request a credit by emailing [accounts@fractionservers.com](mailto:accounts@fractionservers.com). The email must include the dates and times of the downtime and the name and IP address of the server or servers which experienced the downtime. The request must be received by Fraction Servers within ten business days after the incident of downtime. If the unavailability is confirmed by Fraction Servers, a credit will be applied to the customer's account within thirty days of receipt of the customer's credit request.

**6.3** The total amount credited to the customer in a particular month under this agreement shall not exceed the total amount of fees paid by the customer for such month for the affected services. Credits are exclusive of any applicable taxes charged to the customer or collected by Fraction Servers.

**6.4** The provisions of the agreement pertaining to Force Majeure are unaffected by these terms referring to uptime guarantee. Moreover, downtime caused by any of the following shall not result in any obligation by Fraction Servers to provide credit to you:

- 1) Emergency maintenance.
- 2) Scheduled maintenance.
- 3) System upgrades.
- 4) Domain name system (DNS) problems outside of Fraction Servers control.
- 5) Issues with FTP, POP, IMAP, or SMTP customer access.
- 6) Acts or omissions by you or any of your employees or agents, resulting in downtime.
- 7) Any negligence, willful misconduct, or use of the services in breach of Fraction Servers Acceptable Use Policy.
- 8) Problems with users' web browsers, DNS, or other caching that might make it appear the services are unavailable even though others can still access the Fraction Servers services.

## 7 - Hardware Replacement Guarantee

Fraction Servers strives to maintain the integrity of the hardware used to provide its services, and any downtime caused by hardware failure shall be credited pursuant to this agreement. Fraction Servers maintains a stock of all essential hardware necessary to provide the services. Fraction Servers shall replace any and all substantially malfunctioning hardware within 1 hour of Fraction Servers becoming aware of such substantial malfunction.

The amount of time for replacement of hardware shall be measured from the moment that Fraction Servers determines that the hardware must be replaced, and does not include time spent diagnosing the problem, researching other solutions, investigating the cause of the failure or time spent installing software, restoring backups or other, similar situations.

In the event that Fraction Servers fails to meet this hardware replacement guarantee, Fraction Servers will issue, to you, account credits in the amount of ten percent of the base monthly server rent for each hour after the first hour of the monthly service fee for the server in question to a maximum of fifty percent of the cost of the server itself (excluding any management, upgrades or additional services associated with the server in question).

To receive a credit, you must make a request by sending an email message to [accounts@fractionservers.com](mailto:accounts@fractionservers.com). Each request in connection with this agreement must include the dates and times of the hardware replacement situation, the name and IP address of the server or servers which experienced delayed replacement. The request must be received by Fraction Servers within ten business days after the incident. Upon confirmation by Fraction Servers, credit will be applied to your Fraction Servers account within thirty days of receipt of your credit request.