Gandi Cloud Server Contract

Version 2.0 dated May 11th, 2018

You acknowledge that the subscription to and use of Our Gandi Cloud Server services implies the acceptance of and adherence to, without reservation or restriction, Gandi's General Service Terms and Conditions, the present Gandi Cloud Server Contract, all applicable special conditions for the use of accessory services that You may have subscribed to, rates and conditions and technical limitations of Our services, as outlined on Our website at https://www.gandi.net (hereafter referred to as “Our Contracts” or “Gandi's Cloud Server Contract” or the “Present Contract”).

Our Contracts are freely available for viewing on Our website, and they are also presented to You at the time of the subscription of a service, in accordance with the contractual process described in Gandi's General Service Terms and Conditions.

You acknowledge that You have read and accepted them, and to abide by them without condition or reservation.

Capitalized terms in used in Gandi's Cloud Server Contact are defined in Gandi's General Service Terms and Conditions, except for those that are defined in the present Contact.

The present Contract, which determines the services provided by Gandi within the framework of its hosting solutions and obligations as determined by the services subscribed to, complements Gandi's General Service Conditions whose clauses will receive full and entire application, unless stated otherwise in the present Contract.

Section 1. Description of the Gandi Cloud Server service

Gandi provides its hosting solutions, within the context of the Present Contract via a technical infrastructure permanently linked to the Internet. From available resources, You may create one or more hosting servers (mail, web, VOIP, etc.), and manage them in an autonomous manner, via Your Gandi Organization through Gandi's interface (hereinafter referred to as the “Gandi Cloud Server” service).

The technical limits and characteristics of Gandi’s Cloud Server services, as well as all the corresponding prices and any special conditions, are detailed and made available for viewing on Our website at https://www.gandi.net so that You can gain awareness of them before subscribing to one of Our services.

You choose the resources that meet Your needs, and You can subsequently increase or decrease them (RAM, processor power, bandwidth, disk space) as needed, in total autonomy and at any time via Your secure management and administration interface through Your Access Codes, in accordance with the contractual process described in Gandi's General Service Terms and Conditions.

Each server that is created with the resources You have chosen will have a static IP address, so that server can be identified on the Internet.

Section 2. Gandi’s commitments

In addition to the contractual obligations described in Gandi's General Service Terms and Conditions, and Your strict adherence to Your obligations and the conditions and technical limitations specific to each of Gandi's Cloud Server Services, as a technical intermediary providing hosting services, Gandi commits to:

- providing You with the hosting service You choose (within the limits that are detailed on Our website), immediately after validation of Your payment via Your Cloud Credits Account (section 4.1 of the present Contract), and within one hour at the latest, on the condition that the necessary resources would be available,
- making best efforts to assure a continual service uptime of 99.95% per month, with the exception of downtime caused by maintenance scheduled by Gandi, in the event of a Force Majeure, an event that is beyond Our control or that is fortuitous, any problem relating to payment that was caused by You or the banks, or related to the software side of the service (as it is largely dependent of users and the specific configuration that they put in place),
- re-credit Your Credits Cloud Account (section 4.1 of the present contract) for any downtime of the service not covered by these commitments that You may have informed Us of, and which is linked to a problem with Our technical infrastructure (machines and Gandi network), on the basis of a month of 31 days, even if the downtime only lasted a few minutes,
- intervening 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.

The limits of Our obligations and Our responsibility, and the conditions under which We may take action on Your Gandi User Account and/or Organization(s) or server(s), are detailed hereafter, in addition to Gandi's General Service Terms and Conditions.
Section 3. Your specific obligations as part of Gandi Cloud Server Service

You acknowledge and accept that Your obligations listed in Gandi’s General Service Terms and Conditions will be in full force, no matter what service You may have subscribed to (Section 3 of Gandi’s General Service Terms and Conditions). Consequently, You commit Yourself to choosing a service that meets Your needs, or those of Your Administrators or Users, to abide by and to assure adherence to the technical specifications and limitations of Our services, to assure that the use of Our services is done within the limits of the law, and to identify Yourself with Our services.

Additionally, in accepting the present Contract and by using Gandi Cloud Server Services, You must constantly guarantee adherence to the specific obligations below.

3.1. Specific obligation of identification quota

As a reminder, You are required to identify Yourself as per Our contractual agreements (specifically Sections 3.4 and 4 in Gandi’s General Service Terms and Conditions)

In accordance with Our Contracts (Section 3 of Gandi's General Service Terms and Conditions), You take it upon Yourself to assure the strict compliance to obligations that are incurred to You due to Your activity, professional or not, and/or Your status (regulated activity, for example), in such a way that Gandi is never bothered in this regard.

Specifically, We call Your attention to the fact that You must clearly be identifiable to third parties in Your function as a web host, if You use Our services to host public communication services on line (notably websites or blogs) whether or not You are an editor of these services.

You must also in this situation, provide the technical means to any person editing these services to satisfy the identification conditions mentioned below.

According to current applicable laws, the following information must be made available to the public, in an open standard, by anyone whose activity is to publish a public online communication service:

- for an individual: his/her first and last name, street address and telephone number,
- for an organization: the name of the business or organization, the address of its headquarters, its telephone number, and its registration number,
- the name of the director or co-director of the publication is, if applicable, that of the editor in chief,
- the name, address, and telephone number of the hosting provider, it being noted that this contact information must correspond to Your contact information as a customer of Our services. In other words, those that You submitted to Us during the creation of Your Gandi Organization during Your subscription to Our Cloud Server service.

If the public online communication service is not published for professional purposes, the person that publishes this service can choose to remain anonymous, by only providing the name and address of the hosting provider (You) though dependent on You having provided the aforementioned information, which is covered by professional secrecy.

As indicated above, each server that You create within the framework of Our Gandi Cloud Server service, corresponds to a static IP address, that will allow for the identification of the server on the internet.

In compliance with the U.S. local, state and federal laws and regulations, if We are required, We will communicate, in Our function as a hosting provider, the contact information in Our possession that corresponds to the Gandi Organization that was used to subscribe to the service.

You acknowledge and accept that, in accordance with Our Contracts, and under sanctions mentioned therein:

- the information that You provide to Gandi as part of Your Legal obligation to identify Yourself must always be exact, complete, reliable, and up to date (if necessary, You must send Us all proofs of ID upon Our request and within the deadline We provide in Our request),
- activation of the Private Domain Registration service and/or the Gandi Anti-Spam option, as per Our Private Domain Registration Contract (annex 1 of Terms and conditions of domain name registration at Gandi), does not in any way release You from Your legal obligation to identify Yourself, and You must also not substitute Our contact information for Yours in this context,
- if We are informed or learn that the information that You have provided to Us is erroneous, outdated, or incomplete, We will inform You of this breach of Your obligations and ask that You correct the situation.

3.2. Obligation to intervene on Content

You agree to use Our services in a strictly legal way, and in conformity with Your contractual obligations and the technical aspects and characteristics of Our services. You are completely responsible, including in the event that You resell Our services, or grant a license to use to a third party, whether professional or not.
In accordance with Your obligation to guarantee, in permanence, that Our services are being used in a legal manner, Gandi's General Service Terms and Conditions (Section 3), You agree to promptly act, particularly upon receipt of any notification from a third party claiming to have been wronged and mentioning Content present on all or part of Your servers, notably a notification that would be addressed to You, directly or indirectly, to delete litigious Content or to render its access impossible, or to take all necessary action to satisfy the conditions of the notification, in such a way that Gandi is never bothered in any way.

You notably guarantee that:

• if You publish a public online communication service, You will immediately supply, at the first request, in the event of a dispute or complaint from any third party, all necessary evidence that demonstrates that You have a greater rights to the content than the person who filed the complaint, and to not publish, directly or indirectly, any part or whole of any content that may have already been considered or judged as being illegal or prejudicial by any competent authority and to delete it automatically or immediately following the first request to do so as soon as You are informed of its presence.
• in all cases, You will act promptly in the event that You receive a complaint from a third party concerning any or all Content that You host through Our Gandi Cloud Server services, in such a way as to put an end to the alleged problem without delay, and to comply with Your obligation to respect the rights of the third party and to abide by applicable U.S. local, state and federal laws and regulations.

You specifically acknowledge and agree that:

• in the event of a license of use, and notably if You host services for third parties on Your servers, You must make sure that they act promptly on their content. By default, and in all cases, it is Your full and sole responsibility to intervene on Your content,
• any intervention made by Gandi on Your behalf can only be done at the level of one or more of Your servers, or on Your Gandi User Account or Organization(s), and such intervention can affect all the servers and services associated to Your Cloud Server Account, without any distinction.

Consequently, in order to avoid the suspension or deletion of Gandi's Cloud Server service, You must take all necessary measures to assure that You are abiding by Our Contracts and all applicable U.S. local, state and federal laws and regulations. You must quickly and personally intervene, to put an end to any illicit or prejudicial use of Our service that is under Your full and sole responsibility, and to clearly identify Yourself within the framework of Your activity and to assure that all administrators or users of Your servers do likewise.

In any event, it is a violation of the present section and a serious breach of Your contractual obligations if You do not intervene on Your server. Such non-intervention may lead to Your liability with regards to Gandi, notably if We are blamed in Your place, without prejudice to Your responsibility with regards to third parties, in conformity with applicable U.S. local, state and federal laws and regulations.

You shall indemnify and guarantee Gandi of any and all consequences We may suffer due to Your use of Our services, or associated to any of Your Contents. This obligation will survive the termination of this Contract.

You specifically guarantee Gandi against all and any action or claims from third parties linked to the Content installed, issued, published, transmitted, broadcast or reproduced through Your servers, in particular that which results from infringement of personality rights, an ownership right linked to a patent, a trademark, designs and models, copyright, respect of privacy, good moral standards, from the provisions of the U.S. local, state and federal laws and regulations, and/or to abuses or practices that are prejudicial to Internet users, whether the said Content was installed by You or by a third party.

You also agree to find a rapid solution to each problem or dispute which may arise with regards to Your use of Our services and, where applicable, to rapidly communicate the identity of any third party which has a license or right to use and/or manage the services operated via Our technical solutions.

3.3. Obligation to backup Your data

Our service only consists of providing You with technological hosting solutions during the term of this Contract, and does not include the backup of Your Content and/or technical settings, even though We have provided You with several tools with which You can do this.

To help You build a backup architecture that is adapted to Your needs, We provide You with various optional tools (for example the "disk repulsion", and "backup disk" services), which are described and presented on Our website, which You can choose to use or not.

Additionally, in the event of the cancellation of service, for whatever cause, or if Your subscription has ended, Gandi will delete all the data associated with Your corresponding server(s).
You acknowledge that after the deletion of one of Your servers, the static IP address associated with the said server will also be destroyed. Gandi does not guarantee that this IP address will be allocated to You during your next server creation.

You must therefore backup and recover Your contents before the expiration of Your service, or before You change providers, as well as on a regular basis throughout the duration of Your subscription, as indicated in Our Contracts.

The backing up of Your content and technical settings shall be Your sole responsibility. You must take all the necessary steps to ensure regular backups and protection of Your Content and all Your data and configurations, as well as their updates, on media outside Gandi.

3.4. Obligation to preserve the reputation of the IP address of Your server

You commit to preserving, for the entire duration of the present Contract, the reputation of the IP address associated to Your server.

Notably, it is Your obligation to assure that this IP Address is not listed on one or more blacklists, whichever ones they may be (for example https://www.spamhaus.org/, "XBL", or "SBL") and, if necessary, to take all necessary actions to remove the IP address or addresses that are listed, without delay, and to guarantee Gandi with regards to this.

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

You may not use the Gandi Cloud Server 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 User Account or Organization(s) or Gandi Cloud Server(s) for which Gandi receives 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.

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

You may not use the Gandi Cloud Server services 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 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 User Account for which it receives trademark infringement complaints, without prior notice and without a refund of any fees.
Current prices indicated on Our website are the prices applicable to the subscribed service (notably depending on the type, size, and state of the resource) in Cloud Credits for 30 days.

Payment of the Gandi Cloud Server service is done via Your Cloud Credits Account.

### 4.1 Your Cloud Credits Account

Your Cloud Credits Account is for paying the Gandi Cloud Server service. It is automatically created when You subscribe online. A Cloud Credits Account can only be associated to a single Gandi Organization, and can only be used within the framework of Our Gandi Cloud Server service.

Your Cloud Credits Account constitutes a reserve of Cloud Credits that is available for paying for Your usage within the framework of Our Gandi Cloud Server service. Cloud Credits are permanently viewable in Your interface as an amount in the currency You use.

The provisioning of Your Cloud Credits Account is done:

- **via the purchasing of Cloud Credits or by modifying the ending date of the service** in advance via Our website when You are logged in (with Your Gandi Organization and associated password) via available payment means displayed on Our website (notably by credit card, bank transfer, and Paypal) and according to the price indicated on Our site during the operation. By express agreement, the provisioning of a Cloud Credits Account can not be done by bank transfer for an amount less than ten (10) dollars. You acknowledge and accept that bank transfers under this amount will not be taken into account by Our services and will be returned. Your Cloud Credits Account would therefore not be credited, which You acknowledge to have been informed of and accept. If You chose to provision Your Cloud Server account by bank transfer, it will only be credited after the corresponding provisioning has been validated, within seven (7) work days following the reception of Your payment, and under the condition that Your references are complete (notably the transaction number that corresponds to Your order) so that We can apply Your payment to Your order. Upon the reception and validation of Your payment, You will receive an email confirming the provisioning of Your Cloud Credits Account, as well as a link that allows You to access Your invoice, accessible at all times via Your Interface, in the "Billing" section.

- **via the "auto-renew" option**, Your Cloud Credits Account is automatically provisioned every 30 days from Your Gandi Prepaid Account for the amount (minimum amount indicated on Our website) in Cloud Credits necessary for the payment of Your usage, according to the applicable rates that are indicated on Our website during the operation. You may deactivate/reactivate this option at any time from Your Gandi Interface. The auto-renew option will apply to all Your servers associated with Your Organization for a minimum of 30 days.

Cloud Credits are non-refundable, non-transferable, and have an expiration date. Consequently, if You do not use Your Cloud Credits for 2 years from the date of their last use, Your Cloud Credits will be deleted without any possibility of re-credit or refund. You will be informed by email 1 month before the deletion of Your Cloud Credits.

Your Cloud Credits Account is managed autonomously from Your secure administration and management Web Interface, when You are logged in via Your Access Codes (Gandi Organization and associated password).

Your interface will allow You to view the balance of Your Cloud Credits in real time, and to manage the options of Your Cloud Credits Account. You may also, for example:

- deactivate/reactivate the "auto-renew" option,
- modify the ending date of Your services
- add Cloud Credits

You authorize Us to debit Your Cloud Credits Account for amounts corresponding to Your use. You also accept that any indemnifications that Gandi may need to perform, during the term of the contract, shall be directly credited to Your Gandi Cloud Credits Account.

### 4.2 Means of Payment - Billing

You will pay for Your order via Your Cloud Credits Account, in accordance with applicable prices and available means of payment, and according to the contractual process outlined in Gandi’s General Service Conditions. During the creation of Your server online, You will be presented with the price for 30 days in the currency You use. Upon the subscription of the Gandi Cloud Server service, You agree to pay, via Your Cloud Credits Account, the price corresponding to the service that You subscribed to. In accordance with Gandi’s General Service Conditions, We are only bound and You can only benefit from the service ordered upon the validation of Your payment in full.
Subsequently, the Gandi Cloud Server service will be billed according to the ending date You have chosen and Your use.

Your use of bandwidth is limited to 3 Terabytes over 30 rolling days (indicated on Our website), any exceeding of this limit may be sanctioned by a rate limiting of Your resource or a permanent suspension or a deletion of Your services.

You acknowledge that You cannot benefit from the Gandi Cloud Server service if Your Cloud Credits Account or Your Prepaid Account (if the “auto-renew” option activated) has enough credits to pay for Your usage.

If You are unable to pay for the services used, Your server as well as the associated technical services will be automatically deactivated and then permanently deleted without possibility of recovery. Only services that use resources, even if deactivated, will continue to debit Your Cloud Credits Account in the negative (see Section 8). In order to reactivate the Gandi Cloud Server service, You will need to credit Your Cloud Credits Account for an amount sufficient to cover Your use.

It is possible to renew the Gandi Cloud Server services for the duration of Your choice, by manual or auto-renew.

If You create other servers, their ending date will be the same as the first server You created. Please note that this date is modifiable and will also change the ending date of all Your servers.

You acknowledge and accept that Gandi can not be held accountable:

• if You cannot benefit from the services proposed due to a lack of provisioning of Your Cloud Credits Account or Your Gandi Prepaid Account (option “auto-renew” activated) to cover the total amount of Your use,
• if, due to delays caused by the banking establishments to validate/accept Your payment to provision Your Cloud Credits Account, You do not proceed with the payment of Your use.

Each month, a usage report will be available to You via Your Gandi Interface that lists Your total monthly usage and the total amount of Cloud Credits available at the end of the month. If the “auto-renew” option is activated, an invoice summarizing the “auto-renew” Cloud Credits provisioned during the month will also be available. The monthly billing day corresponds to the day when You subscribed to Our Cloud Server service.

Section 5. Activation of the Gandi Cloud Server service

Service activation corresponds to the effective provisioning of the Cloud Server services ordered and fully paid for.

The first activation of the Gandi Cloud Servers service is necessarily for a minimum of 30 calendar days.

Upon the completion of the contractual process, in conformity with Gandi’s General Service Terms and Conditions, We will email You a notification of activation at the email address associated with Your Gandi Account.

For example, the activation of the service, subject to the reception and validation of Your complete payment for the services and options subscribed to, is completed on average within one hour of the subscription via Our website, it being noted that this time frame depends on the choices made.

Section 6. Your Gandi Cloud Server management and administration interface

In conformity with Gandi’s General Service Terms and Conditions, Your secure management and administration interface will allow You to manage Your Gandi Account and associated Gandi Cloud Server services that are associated with it, autonomously, when You log in with Your Access Codes.

The subscription to Gandi’s Cloud Server service and to any associated service is done in accordance with the contractual process described in Gandi’s General Service Terms and Conditions via Your secure management and administration interface.

This interface notably allows You, in total autonomy, and under Your full responsibility:

• to subscribe, to modify, and/or to cancel Gandi Cloud Server services and options to a more or less powerful plan, throughout the duration of the Contract,
• to manage Your Cloud Server (and notably publish online, delete, or modify all or some of the content on Your server),
• to modify and update Your contact information associated with Gandi’s Cloud Server service,
• to change the password(s) associated with all or some of the Administrators or Users that You may have designated,
• to proceed with the technical configuration of all or some of Your servers, as indicated hereafter.

Section 7. Your access codes and administrator access are under Your responsibility and guarantee

As a reminder, in accordance with Our Contracts, Your Access Codes, which are private, are under Your full and complete responsibility.
Additionally, and in conformity with Gandi’s General Service Terms and Conditions, and depending on the service chosen, you may associate your server to one or several "administrators" so that they will be able to connect to the server in question, via a password that has been attributed to them (completely separate from your own Gandi Access Codes).

As a reminder, in accordance with our contracts:

- the issuing of such authorization is made at your own risk, since you remain, with regards to Gandi, fully and entirely responsible for all activity and content on your servers,
- it is your obligation to ensure that passwords chosen offer a sufficient level of security (number and type of characters),
- Gandi does not manage accounts and passwords of administrators, which are under your full and entire responsibility.
Gandi can also not intervene, notably in the event of a loss or theft of the password of an administrator's and/or root account. It is therefore your personal obligation to take all measures necessary to modify or delete access that have been attributed to a specific administrator in the event of the loss or theft of his account.

Section 8. Duration - End of Contract

The Gandi Cloud Server Contract starts from the effective activation of the Gandi Cloud Server service, which implies the reception and validation of payment in full for the services ordered.

Upon this activation, you will benefit from services and resources as long as your Cloud Credits Account or your Gandi Prepaid Account (option "auto-renew" activated) is sufficiently provisioned to pay for your usage.

The services subscribed to terminate if you do not have enough credit in your Cloud Credits Account or your Gandi Prepaid Account (option "auto-renew" activated) to cover the full payment of services that you use, and you will be alerted to this by email.

The ending date of the service is an indicative date, calculated on a constant use of your resources for the type of server you will have created (Small, Medium, Large etc.). This date may fluctuate if you use more resources.

The deletion of servers is preceded by a suspension period, during which time all the servers and technical services that may be associated to the servers are deactivated. Only services that use resources, even if deactivated, will continue to debit your Cloud Credits Account in the negative.

If you do not provision your Cloud Credits Account in negative:

- If you have not activated the “auto-renew” option and if you have not sufficiently provisioned your Cloud Credits Account within 7 days after the expiry of your Cloud Credits, your servers, any associated technical services and your Content will be permanently deleted. We will send you several emails to warn you of the estimated expiration of your Cloud Credits: 15 days before the expiry, then 7 days, then 1 day and finally a last email the day of expiration to inform you of the suspension of your service.
- If you have activated the “auto-renew” option, your service will not be suspended immediately in the event of a negative balance. You will receive 2 days before the automatic provision of your Cloud Credits Account an email informing you of the said supply for the next 30 days. If the provision has failed, an email will be sent to you on the scheduled day of provision to inform you. You will then have to rectify the situation within 7 days, otherwise your Gandi Cloud Server service will be suspended 7 days later, ie a total of 14 days after the provision failure.

The Contract and Gandi Cloud Server services subscribed to also terminate if you cancel them early (Section 10) or in the event of termination by Gandi, in the conditions set forth hereafter.

Section 9. Owner change

Within the framework of our Gandi Cloud Server service, it is not possible to change the owner of a server.

Section 10. Your right to early termination

You may cancel the Gandi Cloud Server service or release all or some of the services or additional resources associated with your Organization. The service is billed per hour, and so any early cancellation will not result in any refund or re-credit, each hour that has started is due in full.

In all cases, the Cloud Credits that remain available in your Cloud Credits Account, will not be refundable, and will be automatically deleted if left unused for 2 years following their last date of use. You will be informed by email 1 month before the deletion of your Cloud Credits.
Section 11. Suspension/Termination by Gandi

11.1. Suspension/Termination with notice

Any failure to abide by Your contractual obligations, which have not been corrected within the given deadline set in Our Notification, shall lead to cancellation of the Contract and the associated services, with no legal formalities and without You being entitled to any reimbursement or compensation, regardless of the contractual period underway to which this termination will apply.

11.2. Suspension/Cancellation without notice in the case of serious breach of Contract

You acknowledge that, in the framework of Gandi Cloud Server service, the following elements shall be considered a serious breach of Your obligations, though Gandi does not have any obligation to monitor Your activity, and assumes no liability as a result of Your content:

- all serious breach of Contract as defined in Our Contracts, and notably any use of Gandi Cloud Server service, directly or indirectly, that is in violation Your obligations as outlined in Gandi’s General Service Terms and Conditions (Section 3), Gandi’s General Terms and Conditions of Domain Name Registration (Section 3) and any special conditions that are applicable to Your domain name’s extension, and which will be defined as a serious breach of Contract,
- any violation or default in Your specific obligation to intervene in the contents of Your server, in application of Section 3.2 of the present Contract,
- any violation or default in Your obligation to preserve the reputation of the IP address associated with Your server, in application of Section 3.4 of the present Contract.

In accordance with Our Contracts, We remind You that:

- any serious breach of Your obligations is grounds for the suspension/deactivation or even deletion of Gandi Cloud Server service, Your server, or Your Organization(s) and/or Your Gandi User Account, without any formality or notice,
- Gandi can not, therefore, be held responsible for the direct or indirect consequences connected with the suspension, deactivation, or deletion of Gandi Cloud Server service, and consequently, Your server and/or Gandi Account,
- consequently, You shall not be entitled to claim any compensation or refund, and You could be required to pay damages in the case of prejudice, in addition to application of the penalties prescribed by legislation in force in the State of California and the United States of America, and Our Contracts.

11.3. If Gandi is constrained by law

You accept that, in accordance with the laws and regulations in the State of California and the United States of America, and Our Contracts, We may proceed with the immediate suspension or deletion of all of part of the services You have subscribed to and/or Your servers and/or Your Gandi Account without notice, and consequently, any additional service associated to Your Gandi Account:

- to meet a legal or regulatory obligation, or in application of the rules that govern Our activity as a technical intermediary, or,
- when ordered by a competent authority (in particular through application of a judicial or extra-judicial decision),
- if We receive a notification in conformity with the Luxembourg law, concerning all or part of Your website or its contents, in the framework of the hosting service subscribed to.

We also reserve the right to suspend Your server if it is under a DDoS attack, which may disturb the well-functioning of the platform.

Note that in all the cases described in the present Section 11 (11.1, 11.2, and 11.3), termination by Gandi results in the permanent deletion of Your servers and any content that they may contain. Our intervention can technically only occur on a server as a whole, and not on any specific content, what it may be.

Additionally, You accept and agree that Gandi cannot be held liable for any interventions that have been taken as part of the present Section 11, and You can not claim any indemnity or refund, regardless of the contractual period underway during which this termination by Gandi may have occurred.

Additionally, You may be required to pay damages or interest in the case of prejudice, in addition to application of the penalties prescribed by the laws of the State of California, and the United States of America.

Section 12. Technical interventions by Gandi

Gandi intervenes, in its role as a technical services provider, for the purpose of ensuring the proper operation of its services, the safety and stability of the system.

In that respect, Gandi may intervene under the following circumstances:
• to stop a technical malfunction inherent to Our system,
• to carry out a maintenance operation,
• in case of trouble affecting the safety and/or the stability of the system: abusive use and/or illegal use of Your server without Your rapid reaction by Yourself or following a warning from Our service (ex: spamming, fraud, hacking, unauthorized access attempts...); obvious damage to, or attempt to damage Our infrastructure caused by Your server (DDoS, botnet, spamming, ...),
• as part of Our customer service, with Your consent, and if Our intervention turns out to be necessary.

These interventions, and notably scheduled maintenance, are excluded from Our service level agreement, as outlined in the beginning of the Contract (Section 2). Consequently, any downtime that may result are not grounds for a refund or crediting.

This access is intended to facilitate the prompt resolution of certain legal and/or technical problems.

You have subscribed to the “Gandi Expert” service, You will then have to carry out the technical interventions on Your server in order to assure it's proper functioning by Yourself, including in case of malfunction or failure, whatever its cause or origin.

In all event, Gandi reserves the possibility of, if it is absolutely necessary, to interrupt some or all of the service in order to perform a technical intervention, particularly in the case of defective operation, or to improve the operation, or to perform any maintenance operation.

We shall do everything necessary to limit the time of the said interruption as much as possible and, if possible, We shall give You reasonable prior notice, indicating the date, the type and the duration of the intervention, so that You can make all the necessary arrangements.

However, You acknowledge that We will not be able to give You prior notice in the case where the service interruption is due to an external reason (in particular, one that would be inherent to Internet itself) or if it is explicitly requested by a competent authority or in application of current laws of the State of California, and the United States of America.

Section 13. Technical settings - hardware and software security

Gandi agrees to make every effort to ensure the security of its hardware and its technical infrastructure.

However, You acknowledge and accept that the software security of each of Your servers shall be Your sole responsibility. Notably, You agree to take all the steps necessary to secure the access to Your servers, and of Your Access Codes and passwords, as with every website or service put in place via the subscription to Gandi Cloud Server service.

You agree that You are fully responsible for:

• the configuration of Your servers to meet Your particular needs and objectives,
• the application of solutions that are appropriate to secure and/or restrict all or some access to Your servers, content, websites, or applications that You are hosting.

It is also Your sole and entire responsibility to maintain and update software, notably security software, pertaining to Your server(s) or their backup, or to all website or service that has been put in place through Your subscription to Gandi Cloud Server service.

Under no circumstances may Gandi be held responsible for security flaws and damage resulting from Your failure to update the security software and maintain suitable security protocols in the administration of Your server(s).

You agree to inform Gandi immediately of any security flaw or any abusive use of Your servers, regardless of the type, which comes to Your knowledge, so that We can coordinate Our efforts if necessary.

In addition, We reserve the right to suspend, or even delete Your server(s) or Our services and associates resources without prior notice in the case of a security flaw originating from Your servers.

In order to ensure the continual access of its services, Gandi shall duplicate Your data and the information hosted on Your server.

However, You acknowledge that the use of this solution does not constitute a contractual guarantee and, under no circumstances, does it relieve You from performing regular backups of Your data and Your configurations on a medium outside Gandi.

Finally, You commit Yourself to cooperating with any administrative or legal request concerning all or part of Our services, including on Your servers.
Section 14. Exclusions and limits of GANDI's liability

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 RELATD 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 15. 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 16. Reselling Our services

You are authorized to resell Our Gandi Cloud Server services as long as You respect all Our Contracts, all legislation in force, specifically of the State of California and the United States of America, and as long as You ensure that Your clients also respect the legislation in force and the rights of third parties.

By reselling Our services, You agree to offer Your clients the same level of service quality as provided by Gandi.

In this respect, You agree to pass on to Your own clients at least the obligations stated in Gandi's General Service Terms and Conditions and the present Gandi Cloud Server Contract and, more particularly, You agree to ensure that Your clients respect all the obligations stated in this present Contract.

In addition, You agree to uphold all obligations and responsibilities set forth in Gandi's General Service Terms and Conditions at Your expense, with regards to Your clients and/or third parties, in addition to those incumbent on web hosting companies, according to the legislation in force, particularly in the State of California, and the United States of America.
You agree to act in a way which ensures that Gandi is never bothered due to Your activities and/or Your use of Our services, whether professional or not, including as a reseller.

Particularly, You agree to assure that, before any reselling of Our services, that Your customer does not directly or indirectly participate in spamming activities that is listed in the “Spamhaus” registry (Spamhaus Register of Known Spam Operations – ROKSO, which may be freely viewed at https://www.spamhaus.org), and/or is not listed and shall vouch for You customer.

You explicitly agree to defend and hold harmless Gandi to any prejudice or any sentence that should result, either directly or indirectly, from Your activities and Your use of Our services, or the use of third parties through Your intermediary. This obligation shall survive the termination of the Contract.

Specifically, You agree to insure Your activity in order to cover all damage that it may incur, and to be able to efficiently guarantee Your commitments with regards to Gandi.

**Section 17. Contract and fees modification**

In accordance with Gandi’s General Service Terms and Conditions, and applicable clauses, the present Gandi Cloud Server Contract and fees associated to it may be modified notably in order to take in to account any changes in legal or technical jurisprudence.

**Section 18. Modification or Termination of Gandi Cloud Server services**

According to Gandi’s General Service Conditions, Gandi reserves the right to modify or terminate at all time, temporally or permanently, all associated services to Gandi Cloud Server services.

You acknowledge that the static IP address allocated to You can change in case of modification of Gandi Cloud Server services.

You will be informed, if necessary, via an e-mail notification or a warning on Our Site as soon as possible, except in case of emergency endangering the stability and / or the security of Our systems and / or Our services, thus not allowing to meet deadlines.

**Section 19. General provisions**

Our tolerance, if any, of a breach of Contract on Your part, can not be considered as a waiver of Our right to invoke such breach.

In the event of any stipulation of the Contract being declared void or non-enforceable by a competent court, it shall be declared unwritten, and will not lead to the cancellation of other stipulations, which shall remain in force to their full extent.

**Section 20. Applicable law - jurisdiction**

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 the Gandi Cloud Server Contract-