



# Terms of Service

Last Update: December 4<sup>th</sup>, 2012

These Terms of Service (the "Agreement" or "TOS") apply to the purchase from GMO CLOUD AMERICA INC., a California corporation ("GMO", "we", "us" or "our"), of all services (collectively, the "Services") selected by you ("Customer" or "you") on our information maintenance interface that is accessible via our website ("Interface"). This is a binding legal agreement between you and GMO and sets forth the terms and conditions that govern your use and access to the Services. You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

## 1. USE OF THE SERVICES

You may access and use the Services in accordance with this Agreement. You will adhere to all laws, rules, and regulations applicable to your use of the Services.

To access the Services, you must create an account associated with a valid e-mail address. Unless explicitly permitted by us, you may only create one account per email address. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by our breach of this Agreement, we and our affiliates are not responsible for unauthorized access to your account. You will contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen.

### A. How We Use Your Information

We use Non-Personally Identifying Information in a variety of ways, including: to help analyze Site traffic, understand customer needs and trends, carry out targeted promotional activities, and to otherwise improve our services. We may use your Non-Personally Identifying Information by itself or aggregate it with information we have obtained from others. We may share your Non-Personally Identifying Information with our affiliated companies and third parties to achieve these objectives, as well as other objectives we reasonably believe will add value to the user experience for our services.

The Personally Identifiable Information you provide to us is generally used to carry out your requests, respond to your inquiries, better serve you, or in other ways related to the

circumstances in which you provided the information. We may also use this information to later contact you for a variety of reasons, such as customer service, providing you promotional information for our products or those of our affiliated companies, or to communicate with you about content or other information you have posted or shared via our Site. We may also provide your information to our merchants and other third parties who may contact you to promote their products and services. You may opt-out from receiving future promotional information from us or our affiliated companies, or direct that we not share your information with any third parties, as set forth below.

Third party content, such as software applications provided by third parties, may be made available directly to you by other companies or individuals under separate terms and conditions, including separate fees and charges. Because we may not have tested or screened the third party content, your use of any third party content is at your sole risk.

## **2. CHANGES**

We reserve the right to modify the network and facilities used to provide the Services for purposes including but not limited to accommodating evolving technology and increased network demand, and providing enhanced services. We shall use reasonable efforts to notify Customer of any planned changes to our network or facilities that may adversely affect the Services provided hereunder. We also reserve the right to change, discontinue, or deprecate any of the Services or change or remove features or functionality of the Services from time to time. We will notify you of any material change to or discontinuation of the Services.

## **3. YOUR RESPONSIBILITIES**

### **A. Your Content**

You are solely responsible for the development, content, operation, maintenance, and use of Your Content. As used herein, (a) "Your Content" means any software, data, text, audio, video, images or other content (collectively, "Content") that your End Users run on the Services, cause to interface with the Services or upload to the Services under your account or otherwise transfer, process, store or use in connection with your account; and (b) "End User" means any individual or entity that directly or indirectly through another user: (i) accesses or uses Your Content; or (ii) otherwise accesses or uses the Services under your account.

### **B. Security and Backup**

You are responsible for properly configuring and using the Services and taking your own steps to maintain appropriate security, protection and backup of Your Content, which may include the use of encryption technology to protect Your Content from unauthorized access and routine archiving of Your Content. Log-in credentials and private keys generated by the Services are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private

key to your agents and subcontractors performing work on your behalf.

### **C. End User Violations**

You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Services. You are responsible for End Users' use of Your Content and the Services. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to Your Content and the Services.

### **D. End User Support**

You are responsible for providing customer service (if any) to End Users. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide support or services.

## **4. TERM AND TERMINATION**

This Agreement shall be for the term specified by Customer on the Interface, as applicable (the "Initial Term"). This Agreement will be automatically renewed, at the end of the Initial Term or any extension thereof unless either party provides fourteen (14) days written notice to the other of termination of this Agreement prior to the end of the then current term. The Initial Term and all extensions thereof are collectively referred to herein as the "Term" of this Agreement. You may terminate this Agreement prior to the end of the Initial Term or any extension thereof in accordance with the Cancellation section herein.

We may also terminate this Agreement immediately upon notice to you (a) if our relationship with a third party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, (b) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us, (c) in order to comply with the law or requests of governmental entities, or (d) if you breach any term of condition of this Agreement and fail to cure such breach within five (5) after we notify you.

Upon any termination of this Agreement, (a) all your rights under this Agreement immediately terminate; (b) you remain responsible for all fees and charges you have incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination; and (c) you will immediately return or, if instructed by us, destroy all our Content in your possession.

Unless we terminate your use of the Services for cause pursuant to the second paragraph of this Section 4, during the 30 days following termination: (i) we will not erase any of Your Content as a result of the termination; (ii) you may retrieve Your Content from the Services only if you have paid any charges for any post-termination use of the Services and all other

amounts due; and (iii) we will provide you with the same post-termination data retrieval assistance that we generally make available to all customers.

## **5. BILLING AND PAYMENT**

### **A. Fees:**

During the term of this Agreement, Customer shall pay the fees for the Services that are set forth on the Order Form or the Interface, as applicable. In addition to such fees, GMO may charge taxes, fees or assessments by governmental agencies and shall have the right, at any time, to pass through and invoice to Customer any new or increased taxes, fees, assessments or other charges imposed on or required to be collected by GMO by any governmental agency. Customer shall also be responsible for paying all taxes, fees or assessments and other charges imposed on Customer by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder.

### **B. Terms of Payment:**

Invoices are due and payable upon receipt. If Customer, in good faith, disputes all or any portion of an invoice, Customer must, within thirty (30) days of the date of the invoice, (i) pay all undisputed amounts and (ii) provide GMO with written notice of the details of the billing dispute, together with all supporting documentation. The parties agree to work diligently and in good faith to resolve all billing disputes. Disputed amounts found to be properly owed to GMO shall be paid promptly following resolution of the dispute, together with the late-payment interest fee set forth below on such amount accrued from the 30th day following the date of the original invoice. All payments shall be made in U.S. currency.

### **C. Service Charge:**

Customer will pay a late payment charge equal to 1.5% (or the highest amount permitted by law, whichever is lower) per month or portion thereof on the outstanding balance of any invoice remaining unpaid thirty (30) days after the date upon which payment is due.

### **D. Suspension or Interruption of Service for Non-Payment:**

In the event Customer's account becomes past due, or if GMO has a reasonably held belief that Customer may be unable to pay its debts as they become due (i.e., is financially insecure), GMO may, in its sole discretion, suspend, interrupt or disconnect the Services upon three (3) days' written notice to Customer. In the event of such suspension, interruption or disconnection, Customer may be required to post a deposit or such other security, as GMO, reasonably deems necessary in order to resume receiving the Services. In addition, if GMO determines that Customer may be financially insecure, GMO may require such other action of Customer as GMO determines is necessary under the circumstances, including letters of credit, security deposit(s), restrictions on available

credit or other action as GMO may require from time to time regardless of Customer's then-current payment status on its account or its payment history on such account. Failure to satisfy GMO's request for such action within timelines set by GMO, may result in immediate termination of Services without further notice. Customer may not withhold or set off any payment for any reason without GMO's prior written consent. GMO shall have no liability for any loss or damage resulting from its suspension or termination of Services under this Agreement.

#### **E. Refunds:**

GMO is not required to issue refunds or credits except as specified in this Agreement. Without limiting the generality of the foregoing: (i) fees for Pay-as-You-Go Plans are non-refundable, and so are fees for Fixed Fee Plans, except as specifically set forth in the Service Level Agreement.

### **6. ACCEPTABLE USES**

Customer shall at all times adhere to GMO's Acceptable Use Policy ("AUP") attached to this TOS. Notwithstanding anything to the contrary contained herein, GMO may immediately take corrective action, including disconnection or discontinuance of any and all Services, or terminate this Agreement in the event of notice of possible violation by Customer of the AUP.

### **7. CANCELLATION POLICY**

Customer may terminate this Agreement by giving GMO at least fourteen (14) days' prior written notice. However, Customer remains obligated to pay all amounts remaining in Initial Term and any extension thereof. In order to terminate early, Customer's primary contact person on the account should notify GMO of such request to do so. In the case of credit card orders, all termination requests should be signed by Customer's primary contact person on the account who must provide the last four digits of the credit card on file with GMO. However, GMO shall not be liable for unauthorized termination of an account.

### **8. DISK USAGE**

Customer agrees that disk usage shall not exceed the number of megabytes per month for the Services ordered by Customer on the Service Order Form. GMO reserves the right to monitor the customer's usage. If disk usage exceeds the agreed-upon number of megabytes per month, GMO, in its sole discretion, may assess additional standard charges, disconnect or discontinue any and all Services, or terminate this Agreement.

### **9. EQUIPMENT**

Customer acknowledges that any hardware, software and other equipment utilized by GMO to provide the Services or supplied by GMO to Customer for purposes of Customer receiving the Services (collectively, the "Equipment") is and remains the property of GMO, or its licensors,

subject to purchase rights, if any, specifically granted to Customer under this Agreement. In the event that Customer exercises a purchase option for the Equipment, Customer acknowledges that any rights or remedies Customer may have regarding the performance or compliance of such purchased Equipment are limited to warranties, if any, extended by the manufacturer of such Equipment, to the extent that such warranties are assignable by GMO to Customer. Customer further acknowledges that GMO will have no responsibility for any other equipment utilized by Customer to receive the Services whether supplied by Customer or any third party (“Customer Equipment”). Customer is responsible for risk of loss or damage to any Equipment supplied by GMO to Customer to enable Customer to receive the Services and shall ensure that, during the term of this Agreement, such Equipment is insured for full replacement value with a reputable insurance company licensed to do business in the state in which the Equipment is located. Customer shall operate the Equipment supplied by GMO in accordance with GMO and manufacturer’s guidelines. Customer is entitled to use any Equipment supplied by GMO only in connection with Customer permitted use of the Services. Customer shall not resell, transfer, export or re-export any Equipment, or any technical data derived therefrom, in violation of any applicable United States or foreign law and is responsible for loss of or damage to such Equipment. GMO reserves the right to substitute, change or modify the Equipment or any software utilized to provide the Services at any time. GMO shall not be responsible for any changes in Services that cause Customer Equipment to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. However, if practicable (without an obligation to expend funds or incur additional costs), GMO will assist Customer in resolving any such Equipment problems over which GMO may have control. GMO may interrupt the Services at any time, without liability to Customer, to perform scheduled or emergency maintenance.

## **10. PROHIBITED ACTIONS**

### **A. Customer shall not:**

- Alter, modify or improperly use any portion of the Equipment or the software utilized to provide the Services;
- Perform or attempt to perform maintenance services on the Equipment unless specifically requested by GMO to do so;
- Attach devices or other equipment not approved by GMO [or the original manufacturer of the Equipment] to the Equipment; or
- Alter or modify Customer’s IP address space on any interface on the Equipment without prior communication to GMO.

## **11. DISCLAIMERS**

THE SERVICES ARE PROVIDED “AS IS.” WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICES OFFERINGS OR ANY THIRD PARTY

CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## **12. INDEMNIFICATION**

You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Services (including any activities under your account with us and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you or any End User; (c) Your Content or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising or marketing of Your Content; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.

We will notify you of any claim subject to the above paragraph, but our failure to promptly notify you will only affect your obligations under such paragraph to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

## **13. LIMITATION OF LIABILITY**

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLAS, ANY UNANTICIPATED OR

UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 9 MONTHS PRECEDING THE CLAIM.

#### **14. INTELLECTUAL PROPERTY**

Customer represents and warrants that Customer's use of the Services shall not infringe the intellectual property or other proprietary rights of GMO, or any third party. Customer further acknowledges that all right, title and interest in any and all technology, including the software, that is part of or provided with the Services and any trademarks or service marks of GMO, or third parties utilized in connection with the Services (collectively, "GMO Intellectual Property") is vested in GMO, and/or in GMO's licensors. Unless otherwise specifically provided in this Agreement, Customer shall have no right, title, claims or interest in or to the GMO Intellectual Property. Customer may not copy, modify or translate the GMO Intellectual Property or related documentation, or decompile, disassemble or reverse engineer the GMO Intellectual Property, to use it other than in connection with the Services, or grant any other person or entity the right to do so. Unless otherwise specifically provided in this Agreement, Customer is not authorized to distribute or to authorize others to distribute the GMO Intellectual Property in any manner without the prior written consent of GMO; provided, however, that nothing in this sentence would preclude Customer from using the GMO Intellectual Property as incorporated in the Services. This paragraph shall not operate to extinguish, restrict, vary, waive or affect in any manner whatsoever any right, title or interest which Customer may now have or hereafter acquires in, or in relation to, the third-party software that is part of or provided with the Services solely to the extent such third-party licensors publicly provide such rights, title or interest in the third-party software to Customer.

#### **15. MODIFICATIONS TO AGREEMENT.**

We may modify this Agreement at any time by posting a revised version on our website or by otherwise notifying you. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check our website regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.



## **16. MISCELLANEOUS**

### **A. Confidentiality and Publicity.**

You will not disclose GMO Confidential Information during the Term or at any time thereafter. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Services without our prior written consent. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors), or express or imply any relationship or affiliation between us and you or any other person or entity except as expressly permitted by this Agreement or we approve in writing.

For purposes of this Agreement, GMO Confidential Information means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. GMO Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. GMO Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the GMO Confidential Information.

### **B. Force Majeure**

We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

### **C. Independent Contractors.**

We and you are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services,

concepts, systems, or techniques developed or contemplated by the other party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

#### **D. No Third Party Beneficiaries**

This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

#### **E. Import and Export Compliance**

In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Services, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the GMO region in which any of the foregoing occur.

#### **F. U.S. Government Rights**

The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If you are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

#### **G. Notices**

We may provide any notice to you under this Agreement by: (i) posting a notice on our website; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on our website will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

To give us notice under this Agreement, you must contact us as follows: (i) by facsimile transmission to (949) 296-6260; or (ii) by personal delivery, overnight courier or registered or certified mail to GMO CLOUD AMERICA INC. 4685 MacArthur Court #150

Newport Beach, CA 92660. We may update the facsimile number or address for notices to us by posting a notice on our website. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

All communications and notices to be made or given pursuant to this Agreement must be in the English language.

## **H. Assignment**

You will not assign this Agreement, or delegate or sublicense any of your rights under this Agreement, without our prior written consent. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

## **I. No Waivers**

The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

## **J. Severability**

If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

## **K. Governing Law; Venue**

The laws of the State of California, without regard to conflict of law rules, govern this Agreement and any dispute that might arise between you and us. Any dispute relating in any way to the Services or this Agreement will be adjudicated exclusively in any state or federal court in Orange County, California. You consent to exclusive jurisdiction and venue in those courts. We may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of our, our affiliates, or any third party's intellectual property or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

## **L. Entire Agreement**

This Agreement and the policies described or referenced herein represents entire agreement between you and us regarding the subject matter of this Agreement. This

Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. Notwithstanding any other agreement between you and us, the security and data privacy provisions in this Agreement contain our and our affiliates' entire obligation regarding the security, privacy and confidentiality of Your Content. We will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

### **M. Attorneys Fees**

In the event of any dispute with respect to the subject matter of this Agreement, the prevailing party shall be entitled to all of such party's costs and expenses, including reasonable attorneys' fees and costs, incurred in resolving or settling the dispute. These costs and expenses shall be in addition to any other damages to which the prevailing party may be entitled.

### **N. Survival**

The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive (including, without limitation, Sections 11, 12, and 13).

### **O. Acceptance of Services**

Acceptance of this Agreement by GMO may be subject, in GMO's absolute discretion, to satisfactory completion of a credit check and continued credit worthiness of Customer. Activation of Services shall indicate GMO's acceptance of this Agreement. Use of the Services by you constitutes acceptance of this Agreement. Customer represents and warrants that Customer has full authority and right to enter into this Agreement. Customer further represents and warrants that Customer is at least 18 years of age or an entity, and that Customer is not located in a country subject to U.S. embargoes, or listed on the U.S. Treasury Department's list of specially designated nationals, or listed on the U.S. Commerce Department's denied persons or entities list.



## SPECIAL PROVISIONS FOR GMO CLOUD PUBLIC SERVICE

These Special Provisions for GMO Cloud Public Service (these “Special Provisions”) supplement the TOS between GMO and the customer of GMO Cloud Public Service (“Customer” or “you”). This is a binding legal agreement between you and GMO and your use of GMO’s Services evidences your acceptance of these Special Provisions.

### 1. FREE TRIAL PERIOD

During the “Free Trial Period”, as defined by the particular offer made on GMO’s website, GMO will provide its Services at no charge to you. At the expiration of the Free Trial Period, you will be obligated to pay GMO for its Services according to GMO’s current rates. GMO may specify further details relating to the Free Trial Period on its website from time to time which will become additional terms under these Special Provisions.

The free trial will only apply to the first service you setup (1 location). The Free Trial Period will not apply to additional locations or changes of price pack.

### 2. SERVICE LEVEL AGREEMENT

This SERVICE LEVEL AGREEMENT (the “SLA”) is a policy governing the use of the Service under the TOS between GMO and users of the Service.

#### A. Definitions

- (a) “Infrastructure System” is the virtual computing resource (hypervisor and storage) and network provided by GMO related to GMO’s provision of Services.
- (b) “Virtual Machine” is a server structured by using the virtual computing resource.
- (c) “Unavailable” means that the Virtual Machine is inactive because of a failure of Infrastructure System.
- (d) “Service Month” is the term from the first to the last day of the preceding calendar month.
- (e) “Monthly Uptime Percentage” refers to the percentage of a Virtual Machine’s active time during the Service Month. It is calculated via the formula below:

$$(1 - \text{Unavailable time} / \text{total hours within the Service Month}) * 100$$

## B. Service Level

GMO will make all commercially reasonable efforts to maintain the Virtual Machine in an active state with a Monthly Uptime Percentage of at least 99.95% during the Service Month. Should the Monthly Uptime Percentage of the Customer fall to less than 99.95%, GMO shall reimburse 10% of the monthly fee of said Virtual Machine.

## C. Exceptions

- (a) This SLA does not apply to unavailability of Virtual Machines caused by or associated with:
- scheduled or emergency maintenance and upgrades;
  - fire, flood, earthquake, hurricane or other acts of God, epidemics, and attacks by third parties by malicious intent;
  - unavailability, interruption or delay in telecommunications or third party service unrelated to GMO;
  - failure of access circuits connected to the GMO network;
  - defects in software and equipment of third parties used by GMO to provide the Service;
  - failure of equipment beyond the control of GMO;
  - defects in software installed to the Virtual Machine by the Customer; or
  - customer acts or omissions which cause the Virtual Machine to become unavailable.
- (b) This SLA only applies to our USA and Japan locations. This SLA does not apply to our Malaysia location.



## Acceptable Use Policy

### 1. SCOPE

This AUP is intended to govern how you use the services of GMO. The AUP shall be incorporated into and made part of the Service Agreement, but also is intended to govern any person or entity that otherwise uses our site or services, but that has not entered into a Service Agreement with us. From time to time, amendments to this AUP will be posted at this URL. Your continued use of our site or services following the posting of any amendment, modification or change shall constitute your acceptance thereof. While we may advise you of changes to this AUP, it is your obligation to review the terms of this AUP and stay current on the most recent version.

Our AUP prohibits the following (non-exclusive list of) activities:

### 2. SPAMMING

Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). Spamming may violate the federal CANSPAM Act of 2003 (15 USC §7701, et. seq.) as well as other state and federal laws in the United States. Spamming has a negative impact on consumer attitudes toward GMO CLOUD AMERICA and can disrupt GMO CLOUD AMERICA's service or otherwise interfere with user experience. Also, we prohibit maintaining an open SMTP relay. In reviewing spam or spam-related complaints, we have sole and absolute discretion to determine, from the information readily available to us, whether you (or any of your customers using our site or services) are spamming. We may take any steps we deem necessary to protect our site, our users and customer and/or the public for the effects of any spam-related activities.

We also do not allow users of our site or services, under any circumstances, to engage in forging, misrepresenting, omitting or deleting message headers, return mailing information and/or Internet protocol address to conceal the identity of other individuals, business entities and organizations. Such conduct may (or may not) be connected with spamming.

### 3. INTELLECTUAL PROPERTY/INDIVIDUAL RIGHTS VIOLATIONS

Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy and patents held by individuals, corporations or other entities. We also prohibit engaging in

activity that violates the privacy, publicity or other personal rights of others. We may be required by law to take down or otherwise block access to customer content upon receipt of a proper notice of copyright infringement in accordance with the Digital Millennium Copyright Act (“DMCA”) 17 USC §512. Upon notice of a violation of a third-party’s intellectual property rights, we will take steps we deem appropriate to protect such rights and may undertake our own investigation to determine the validity of such claims and to determine whether your involvement was inadvertent (though such investigation is not a requirement in each instance and shall not be a prerequisite of us taking action). Based upon any investigation we may conduct (including the severity and frequency of such claims made against you) we may take any steps we deem necessary to protect the intellectual/individual rights of others.

#### **4. HACKING**

Hacking includes, but is not limited to, illegally or without authorization, accessing other persons’ computers, accounts or networks, penetrating or attempting to penetrate security measures, port scans, stealth scans and other activities designed to assist in hacking.

#### **5. POSTING THREATENING LANGUAGE ON OUR SYSTEM/SERVERS**

Using our system or services to abuse or otherwise threaten individuals, organizations or business entities or to otherwise expose others to inappropriate ridicule is unacceptable. Upon receipt of notice of any violation of this policy, we may, at our sole and absolute discretion, take down some or all of a URL that we believe violates this policy.

#### **6. DISTRIBUTION OF INTERNET VIRUSES, WORMS, TROJAN HORSES OR OTHER DESTRUCTIVE ACTIVITIES**

Any active or passive use of our site or services to engage in distributing information regarding the creation of or the sending of Internet viruses, worms, Trojan horses, ping, flooding, mailbombing denial-of-service attacks or other such conduct. We also forbid activities that disrupt or otherwise interfere with the use of the Internet by us, our customers or other Internet users.

#### **7. FACILITATING A VIOLATION OF THIS AUP**

Engage in advertising, transmitting or otherwise making available any software, program, product or service that is designed to violate any of the items of this AUP.

#### **8. EXPORT CONTROL VIOLATIONS**

Engaging in (directly or indirectly) the export encryption software or any other unpermitted products via our site or by utilizing our services to points within or outside the United States in order to facilitate the sale or distribution of such unlawful products.



## **9. PROHIBITION OF ADULT SITE**

Maintaining, hosting or otherwise facilitating websites that display, market or otherwise distribute adult material, or images and text which, in any way, can be constituted as adult material. We maintain the right, in our sole and absolute discretion to block, terminate or abandon any material of this nature.

## **10. CUSTOMER'S RESPONSIBILITY**

It is the Customer's sole responsibility to keep their contact information updated and current so that we may contact you in the event of a violation of this AUP. If we are unable to address concerns we may have regarding any violation of this AUP with you because your contact information is out of date, we may take action to change, disable, quarantine, or terminate your services or your use of our site or system without your input. This, in no way, should be read to create an obligation that we must contact you before we change, disable, quarantine or terminate your services. There are many instances in which we will take immediate action (i.e. without attempting to contact or otherwise notify you) to protect you, our site/system/services, our customers and the general public from harm.

## **11. OTHER ILLEGAL ACTIVITIES**

We do not allow our Customers, under any circumstances, to engage in activities that are determined to be illegal, including advertising, transmitting or otherwise making available Ponzi schemes, pyramid schemes, fraudulently charging credit cards or pirated software.

## **12. MONITOR OF CUSTOMER ACTIVITY**

We do not, as an ordinary practice, monitor the communications of our customers or those that use our site/system/services to ensure that they comply with our AUP or the applicable laws. However, if we become aware of harmful activities or conduct in violation of this AUP, we may undertake such investigation to determine whether action is necessary, including but not limited to removing information, shutting down a website, implementing screening software designed to block offending transmissions, denying access to the Internet or taking any other action it deems appropriate.

From time to time, we may become legally obligated to disclose or monitor your activity or the activity of your users (i.e. via subpoena, court order, warrant, or other such request). In such instances, we may not advise you of such legal process. You agree to hold us harmless from any lawful compliance with the law and/or legal process.

We may also generally monitor the activity of our site/system/services to maintain and improve the customer experience. In such instances, we will not specifically monitor any communications or files, but will monitor the performance of our site/system/services.

### **13. YOUR RESPONSIBILITY OF YOUR USERS**

Many of our customers are themselves providers of Internet services for others that are not directly our customers. However, you are responsible for the actions of your customers. To the extent they are in violation of our AUP, we may take action against you due to the conduct of your customer that is in violation of this AUP. Therefore, we recommend that your customers be advised of this AUP to avoid our having to take action to enforce this policy that may have an impact on your business. With respect to our clients that offer internet services to others, we will endeavor to work with you before taking corrective action, however, we are not obligated to do so.

### **14. Customers Should Take Steps to Protect Their Privacy**

The Internet is neither more nor less secure than other means of communication, including mail, facsimile and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, we urge our customers to use commercially reasonable methods to protect their data and to assume that all of their online communications may be insecure. We are not responsible for the security of information you transmit using our site/system/services.

We hope this AUP is helpful in clarifying your obligations as well as the obligations of any other person that uses our site/system/services. Please review our privacy policy concerning use of any information we may collect as well as our terms and conditions that provides further information regarding the limitations of our liability. Any complaints about a violation of this AUP should be sent to [AbuseUS@gmocloud.com](mailto:AbuseUS@gmocloud.com).

GMO CLOUD AMERICA INC.  
4685 MacArthur Court #150  
Newport Beach, CA 92660, USA  
Phone: (949) 296-6260  
Fax: (949) 296-6265