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## Legal

Please direct all legal correspondence to the following:

GEM Solutions, Inc.  
C/O: Marc Ginsburg  
655 Deerfield Road, Suite 100-407  
Deerfield, IL 60015  
info@gem-solutions.com  
312-343-4467 Phone  
800-877-9087 Fax

This Master Service Agreement shall constitute a binding contractual agreement between GEM Solutions, Inc., an Illinois Corporation, (hereinafter "GEM"), and the subscriber of services ("Customer"). The Master Service Agreement shall include the Terms of Service (TOS), the Acceptable Use Policy (AUP), the Service Level Agreement (SLA) and the Privacy Agreement (PA). Customer agrees to be bound to all agreements found herein.

**Note: GEM reserves the right to supplement and/or amend, at any time, the terms and conditions of its Master Service Agreement, including the TOS, AUP, SLA, and Privacy Agreement. GEM will provide notice to its Customers via e-mail (to customer's Primary Point of Contact) of any changes affecting cancellation, payment of fees, or the SLA. It is the Customer's responsibility to review GEM's policies on a frequent basis to ensure compliance because the Master Service Agreement in place during your most current month applies, not the MSA which was in place when you registered. Changes requested by Customer to any of these agreements or to the Master Service Agreement must be agreed to in writing by GEM.**

## Company Information

Company Name GEM Solutions, Inc.  
Address 655 Deerfield Road, Ste 100-407  
City, State, Zip Deerfield, IL 60015  
Country USA  
Phone 312-343-4467  
Fax 800-877-9087  
Email info@gem-solutions.com

By \_\_\_\_\_  
Name Marc Ginsburg  
Title President  
Date \_\_\_\_\_

Customer Name JULIE INC  
Address 3275 EXECUTIVE DR  
City, State, Zip JOLIET IL 60431  
Country USA  
Phone 815-741-5684  
Fax \_\_\_\_\_  
Email KTUNNEY@JULIE1CALL.COM

By Karen M. Tunney  
Name KAREN M. TUNNEY  
Title DIRECTOR OF FINANCE  
Date 5-1-12



## Terms of Service (TOS)

Customer agrees to the following terms of service:

1. **Term and Termination:** Unless requesting Hourly Services as defined in paragraph 3 below, Customer agrees to a month to month contract term for services unless otherwise agreed to in writing. The month to month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer. Please carefully review GEM's cancellation policy set forth in Paragraph 8 below. GEM may terminate this Agreement upon nonpayment as set forth in paragraph 10 below. At its sole discretion, GEM may terminate this Agreement if Customer violates any terms and conditions of GEM's AUP.
2. **Monthly Service Fees:** Fees for service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the monthly anniversary date ("Anniversary Billing Date") for all future billings including one time fees, upgrades, additional services, cancellations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month.
3. **Upgrade Fees:** Upgrades ordered on the Anniversary Billing Date will be billed for a full month service and will continue each month on the Anniversary Billing Date. Upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.
4. **Hourly Service Fees:** For any services offered by GEM on an hourly basis ("Hourly Services"), Customer shall specify the period of time for which the Hourly Services are requested, or cancel at any time. The minimum period of time for which Hourly Services may be requested is one hour and Customer will be billed in full hourly increments, and no breakdown by minutes shall be permitted. Unless otherwise specifically stated in the MSA, Customers who request Hourly Services agree to all terms and conditions in GEM's Master Service Agreement, including but not limited to these Terms of Service and the Acceptable Use Policy. Customers will be billed for Hourly Services and receive any Service Level credits, if applicable, on the Anniversary Billing Date (as set forth and defined in paragraph 2 above).
5. **Additional Service Fees:** Additional services, not including Hourly Services, ordered on the Anniversary Billing Date will be billed for the full month service and will continue each month on the Anniversary Billing Date. Additional services ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.
6. **One Time Fees:** One time fees, such as setup fees, administrative fees, bandwidth overages and late fees are due and payable at the time they are incurred, and agreed upon in writing or via ticket with approval.
7. **Taxes:** Customer is responsible for paying all foreign, federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to any services, other than for taxes based on GEM's net income.
8. **Service Credits:** Service credits will be issued to your Customer account and shall be used to offset future billable services. Service credits shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. Service credits shall expire if Customer's account is fully terminated.
9. **Cancellation:** Because cancellation is automated, GEM requires a written cancellation notice via the customer portal, a minimum of 24 hours prior to 00:00:01 CST (GMT-6) on the Anniversary Billing Date for discontinuance or downgrades of month to month services. Failure to supply the requisite 24 hours written notice of cancellation will result in a full billable monthly cycle prior to cancellation. Any server cancellation prior to the minimum deadline will remain online until the automated process reclaims your server on the Anniversary Billing Date. Notice of written cancellation is required through the online Customer portal located at <https://manage.gem-solutions.com>. All Customer data remaining after the cancellation date will be destroyed for security and privacy reasons, unless otherwise required by law.
10. **Refunds & Disputes:** All services rendered by GEM are non-refundable. This includes, but is not limited to: setup fees, one time fees, monthly service fees, upgrade fees, additional service fees, administrative fees, and late fees. Customers seeking to resolve billing errors are instructed to send an e-mail to [accounting@gem-solutions.com](mailto:accounting@gem-solutions.com). Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by GEM in enforcing collection.
11. **Non-Payment:** All payments are due in full on the Anniversary Billing Date. Failure to remit payment for services on the monthly anniversary date is a violation of the TOS. Failure to remit payment for five (5) consecutive days, including the Anniversary Billing Date, shall result in a termination of public access to Customer services. Customer will, however, be permitted access to data and services through the service network. Failure to remit payment for services within seven (7) consecutive days, including the Anniversary Billing Date, shall result in termination of access to the service network and all services shall be reclaimed. A late fee of \$20 will be incurred for failure to remit payment for services on or before the monthly Anniversary Billing Date. A \$50 reconnect fee will be incurred for failure to remit payment for services after public access has been disconnected. All Customer data remaining after seven (7) days of non-payment will be destroyed for security and privacy reasons, unless otherwise required by law.
12. **Data:** GEM agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data integrity, retention, security, backup, and ownership. In the event that GEM handles Customer data, i.e., when replacing hard drives, GEM will act in accordance with PCI guidelines to ensure data is securely handled.
13. **Identity Use:** Customer agrees to use the GEM logo, GEM information, and related services in accordance with GEM's approved marketing guidelines. GEM agrees not to use Customer name, logos, or information without prior written consent of Customer.
14. **Permitted Use:** By accepting the Master Service Agreement, Customer agrees to use GEM's services solely for their intended purposes. **CUSTOMER SPECIFICALLY AGREES NOT TO TAMPER WITH, MAKE DERIVATIVE WORKS OF, REVERSE COMPILE, REVERSE ENGINEER AND/OR DISASSEMBLE ANY OF GEM'S SOFTWARE OR FILES.** If Customer violates or exceeds the Permitted Use, GEM reserves the right to immediately terminate Customer's account and will pursue any and all legal remedies available.
15. **LAWS:** CUSTOMER AGREES TO ABIDE BY ALL LOCAL, STATE, AND FEDERAL LAWS PURSUANT TO SERVICES DELIVERED IN DEERFIELD, ILLINOIS, UNITED STATES OF AMERICA. THIS AGREEMENT IS MADE UNDER AND WILL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. EXCLUSIVE VENUE AND JURISDICTION FOR ANY AND ALL LEGAL REMEDIES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LAKE COUNTY, DEERFIELD, ILLINOIS. EACH PARTY IRREVOCABLY CONSENTS TO THE FOREGOING JURISDICTION AND VENUE REQUIREMENTS AND WAIVES ANY AND ALL OBJECTIONS TO SUCH REQUIREMENTS.



## Terms of Service (TOS)

16. INDEMNIFICATION: CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS GEM, GEM'S AFFILIATES, AND ITS RESPECTIVE OFFICERS, DIRECTORS, ATTORNEYS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, FINES, PUNITIVE DAMAGES, AMOUNTS IN INTEREST, EXPENSES AND DISBURSEMENTS OF ANY KIND AND NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES) BROUGHT BY A THIRD PARTY UNDER ANY THEORY OF LEGAL

LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER'S CONTENT, ILLEGAL ACTIVITY AND/OR ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF A THIRD PARTY'S COPYRIGHT, TRADE SECRET, PATENT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.

17. LIMITATION OF LIABILITY: EXCEPT AS DESCRIBED IN THE SLA, GEM SHALL NOT BE LIABLE TO CUSTOMER FOR HARM CAUSED BY OR RELATED TO CUSTOMER'S SERVICES OR INABILITY TO UTILIZE THE SERVICES UNLESS CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. GEM SHALL NOT BE LIABLE TO CUSTOMER FOR LOST PROFITS, INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS MASTER SERVICE AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF GEM AND ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES, UNDER ANY THEORY OF LAW SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR HOSTING SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE CLAIM.

18. Arbitration: Any controversy or claim arising from service or related to this Master Service Agreement or breach therein in excess of \$500.00 shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The venue and jurisdiction requirements set forth above apply to any arbitration proceedings. The resulting judgment rendered by a licensed arbitrator may be entered in any court having valid jurisdiction.

19. Legal Compliance: By accepting this Master Service Agreement, Customer represents and warrants that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties. Customer further represents and warrants that he/she has full authority and power to execute this Agreement on behalf of the Company he/she represents, if any. Additionally, Customer warrants that he/she is at least 18 years of age or older and are not otherwise legally incapacitated to execute this Agreement.

20. Electronic Signature: Acceptance by Customer of the Master Service Agreement incorporating the Terms of Service, Acceptable Use Policy, Service Level Agreement and Privacy Agreement hereby initiates billable services and is deemed complete by agreement to the terms as described on the online signup form(s) and completion of the ordering process.



## Service Level Agreement (SLA)

The SLA is incorporated into the Master Service Agreement and applicable to all services delivered directly to Customers of GEM. The SLA is not applicable to unrelated third parties or third parties lacking privity of contract with GEM. The uptime guarantees and the resulting SLA credits are applied in monthly terms unless specified otherwise. All SLA guarantees and information listed below are made in good faith and are subject to standard contract remedies. **Note:** SLA credits for Hourly Services will be calculated and applied based on the same monthly calculation used for the month-to-month contracts.

**SLA Credit Claim:** To properly claim an SLA credit due, the Customer's master administrative user must open an SLA ticket located inside the Customer portal at <https://manage.gem-solutions.com> within seven days of the purported outage. Customer must include service type, IP Address, contact information, and full description of the service interruption including logs, if applicable. The SLA claim will be researched by the appropriate GEM department manager and any credit issued will be issued to accounting and the ticket will be updated. SLA credits are issued as service credits on future billing cycles. SLA credits shall not be bartered or traded with other GEM customers. Please allow up to fourteen (14) days for the process of SLA claims.

**SLA Claim Fault:** Customers currently in arrears for monthly services do not qualify for SLA claims. Customers who have been in payment arrears three or more times in the previous twelve months do not qualify for SLA claims. Valid SLA claims will not be credited to the Customer's accounts until all abuse issues are resolved. Any Customer making false or repetitive claims will incur a one-time charge of \$50 per incident for such claims. False or repetitive claims are also a violation of the TOS and may be subject to service suspension. Customers participating in malicious or aggressive internet activities, thereby causing attacks or counter-attacks, do not qualify for SLA claims and shall be deemed in violation of the AUP.

**Public Network:** GEM guarantees 99.999% uptime on all Public Network services to Customers located in our data centers. All Public Network services include redundant carrier grade internet backbone connections, advanced intrusion detection systems and denial of service mitigation. Specific guarantees with SLA information are listed in Table A below.

**Private Network:** GEM guarantees 99.999% uptime on the service network services to Customers located in our data centers. All Private Network services include access to the secure VPN connection, unlimited bandwidth between servers, unlimited uploads/downloads to servers and access to contracted services. Specific guarantees with SLA information are listed in the Table A below.

**Redundant Infrastructure:** GEM guarantees 99.999% uptime on the power and HVAC services to Customers located in our data centers. All computer equipment and related services are served by redundant UPS power units with backup onsite diesel generators. Specific guarantees with SLA information are listed in Table A below.

**Hardware:** GEM guarantees the replacement of failed hardware and hardware components located within our data centers. GEM guarantees a failed hardware component will be replaced within twenty-four hours of Customer notification in the trouble ticketing system. Replacement of failed hardware does not include time required to reload the operating system or applications. Specific guarantees with SLA information are listed in Table B below.

**Hardware Upgrades:** GEM guarantees hardware upgrades will commence and complete within four hours of scheduled hardware upgrade maintenance windows. Hardware upgrades must be scheduled and confirmed in advance through the online ticketing system. Failure to install the hardware within the four hour time will result in a waiver of any one time installation fees. Extended hardware installation times from initial upgrade commencement shall result in SLA credits for the recurring fee associated with the hardware upgrade. These time and SLA credits are listed in Table C below.

**Table A: Public Network, Private Network, Infrastructure SLA**

Uptime Guarantee	SLA Credit	Uptime Guarantee	SLA Credit	Uptime Guarantee	SLA Credit
99.9%	Guaranteed	99.5%	40%	99.1%	80%
99.8%	10%	99.4%	50%	99.0%	90%
99.7%	20%	99.3%	60%	Less than 99%	100%
99.6%	30%	99.2%	70%		

**Table B: Hardware SLA**

Replacement Guarantee	SLA Credit	Replacement Guarantee	SLA Credit	Replacement Guarantee	SLA Credit
24 hours or less	Guaranteed	28.1 to 32 hours	40%	36.1 to 40 hours	80%
24.1 to 28 hours	20%	32.1 to 36 hours	60%	40.1 hours +	100%

**Table C: Hardware Upgrade SLA**

Replacement Guarantee	SLA Credit	Replacement Guarantee	SLA Credit	Replacement Guarantee	SLA Credit
24 hours or less	Guaranteed	28.1 to 32 hours	40%	36.1 to 40 hours	80%
24.1 to 28 hours	20%	32.1 to 36 hours	60%	40.1 hours +	100%



## Acceptable Use Policy (AUP)

**General Statement:** GEM is dedicated to the unrestricted free transmission of information via the internet and its many resources. Our goal is to deliver enterprise quality on-demand IT services to all of our Customers while serving as the medium of exchange for transmission of all information. The storage, distribution, and exchange of information (content) is the internet's single most valuable feature. GEM is dedicated to protecting the source and distribution of information and protecting the rights and privileges of those utilizing it. GEM does not purport to be the content police; our duty in the process of information dissemination is simply to act as conduit between interested parties. Notwithstanding anything found herein, SofLayer follows all local, state and federal laws pursuant to the services delivered over the internet and directly related to our network and internal systems. The purpose of this AUP is to inform all Customers of acceptable, anticipated Customer use. Due to the myriad of possibilities in maintaining a network comprised of thousands of servers, this AUP is intended to act as a guideline to service and not to be all encompassing.

**Public Network:** The primary purpose of the GEM Public Network is to transmit information (packets) to and from Customer servers and data storage services. Proper use of the Public Network is to utilize the network in any way so long as Customer does not violate any local, state, or federal laws or generate harm to the network or interfere with the use of services of other users utilizing the same network. All Customers are granted equal access to the Public Network. Violation, misuse, or interference of the public network shall be considered a violation of the AUP and shall trigger the Methods of Resolution under this AUP as set forth below in Table D.

**Private Network:** The primary purpose of the GEM Private Network is to allow secure private network connectivity to the private backend network directly connecting Customer servers and GEM delivered services. Proper use of the Private Network is the upload/download of content, server administration, transmission of information between servers, transmission of information between servers and GEM servers, secure private administration of services, data retrieval, console access, and true out of band management of their entire IT environment. The Private Network can also be utilized for service access during periods of non-payment, copyright infringement, spam abuse, service interruption or other instances requiring server administration. All Customers are granted equal access to the private secure network to securely manage their services. Connectivity to the Private Network is granted on an unrestricted basis in eight (8) hour increments. Dedicated connections to the Private Network are available through the sales team. Violation, misuse, or interference of the Private Network shall be considered a violation of the AUP and shall trigger the Methods of Resolution under this AUP as set forth below in Table D.

**Security Services:** The primary purpose of the GEM standard security services is to assist the Customer in the protection, management, update, and overall stability of the outsourced IT environment. All GEM services include network intrusion detection systems and denial of service mitigation via technology from SonicWall. These services are free of charge and are intended to mitigate or remove security risks associated with the respective technologies. GEM also monitors all aggregate network traffic via network and router netflow statistics for traffic analysis. GEM also supplies Microsoft update servers and VMWare update servers located on the Private Network for private secure update services. These services are included free of charge and are intended to assist GEM in the OS management of Customer's servers. Other security services include, but are not limited to: firewalls, host IDS, service monitors and other similar type products and services. Outside of the global network security services described above, Customers are required and obligated to maintain security related to Customer managed servers. The management of dedicated servers requires basic security management including password management, security policies and more. The Customer is ultimately responsible for individual server security unless contracted security services are purchased. Any violation of the security services included in basic services will be addressed pursuant to the Methods of Resolution under this AUP as set forth below in Table D.

**Server Content:** GEM does not actively monitor dedicated server content for review. GEM believes in the free dissemination of information via our services. Dedicated server content will only be reviewed upon complaint by verified third parties. Content that does not violate local, state and federal law or the AUP is deemed in compliance and shall remain intact. Legal adult content is allowed on GEM dedicated servers. Content deemed in violation will be addressed pursuant to the Methods of Resolution under this AUP as set forth below in Table D.

**IP Addresses:** All Internet Protocol (IP) Addresses are owned and managed by GEM. IP Addresses are non-transferable from GEM, and Customer retains no ownership or transfer rights to IP Addresses. All IP Addresses are assigned by the GEM engineering team on a per VLAN, per server basis. Attempted use of IP addresses not originally allocated for use or IP addresses use on non-assigned VLANs or servers is a violation of this AUP. Violation of the IP Address policy shall trigger the Methods of Resolution under this AUP as set forth below in Table D. All IP Addresses are currently registered to GEM via Arin.net assignments. Private IP assignments are available to qualified Customers.

**IRC:** GEM allows the use of private internet relay chat (IRC) servers for communication among private parties. GEM absolutely prohibits the use of IRC servers connected to public IRC networks or servers. IRC servers that result in interference of service, malicious network activity or increased demand on network security services are in direct violation of this AUP. Violation of the IRC policy shall trigger the Methods of Resolution under this AUP as set forth below in Table D.

**Peer to Peer:** GEM prohibits the use of internet peer to peer software for file sharing purposes. Additionally, the sharing of copyright protected software and material is NOT allowed and is in direct violation of federal law and this AUP. Violation of the Peer to Peer policy shall trigger the Methods of Resolution under this AUP as set forth below in Table D.

**Bit Torrent:** GEM prohibits the use of bit torrent protocols on the public network. The sharing of copyright protected software and material is NOT allowed and is in direct violation of federal law and this AUP. Violation of the Bit Torrent policy shall trigger the Methods of Resolution under this AUP as set forth below in Table D.



## Acceptable Use Policy (AUP)

The following list represents per se direct violations of this AUP and will be subject to immediate redress under the Methods of Resolution as described in this AUP and as set forth below in Table D.

**Note:** GEM is not required to follow the Methods of Resolution for Hourly Services, and reserves the right to immediately terminate Hourly Services based on violations of this AUP.

1. **Copyright Infringement:** Direct copyright infringement as defined and noted under Title 17, Section 512 of the United States Code are a direct violation of GEM's AUP. Please refer to DMCA copyright infringement requirements at <http://www.gem-solutions.com/legal.html>
2. **Unsolicited Email:** The sending or receiving of mass unsolicited email (SPAM) is a direct violation of GEM's AUP. This includes the direct sending and receiving of such messages, support of such messages via web page, splash page or other related sites, or the advertisement of such services.
3. **Email Bombing:** The sending, return, bouncing or forwarding of email to specified user(s) in an attempt to interfere with or over flow email services is a direct violation of GEM's AUP.
4. **Proxy Email (SPAM):** The use of dedicated services to proxy email unsolicited users is a direct violation of GEM's AUP. Proxy email is defined as the use of dedicated services to act in concert with other services located inside and outside the network to achieve mass unsolicited email (SPAM) to unrelated third parties.
5. **UseNet SPAM:** The use of dedicated services to send, receive, forward, or post UseNet unsolicited email or posts is a direct violation of GEM's AUP. This includes UseNet services located within the GEM network or unrelated third party networks.
6. **Illegal Use:** Any use of dedicated services in a manner which is defined or deemed to be statutorily illegal is a direct violation of GEM's AUP. This includes, but is not limited to: death threats, terroristic threats, threats of harm to another individual, multi-level marketing schemes, "ponzi schemes", invasion of privacy, credit card fraud, racketeering, defamation, slander, and other common illegal activities.
7. **Child Pornography:** GEM has a zero-tolerance policy on child pornography and related sites. The hosting of child pornography or related sites or contact information is in direct violation of federal law and GEM's AUP.
8. **Threats & Harassment:** The GEM network can be utilized for any type of individual, organizational or business use. This does not include threats to or harassment of individuals, organizations or businesses, unless it falls within the bounds of protected free speech under the First Amendment. GEM seeks to serve only as the medium of exchange for information and refrains from decisions on freedom of speech.
9. **Fraudulent Activities:** GEM prohibits utilizing dedicated services or network services for fraudulent activities. Participation in fraudulent activities is in direct violation of state and federal law and GEM's AUP.
10. **Denial of Service:** GEM absolutely prohibits the use of dedicated services or network services for the origination or control of denial of service attacks or distributed denial of service attacks. Any relation to DOS or DDOS type activity is a direct violation of GEM's AUP.
11. **Terrorist Websites:** GEM prohibits the use of dedicated services for the hosting of terrorist-related web sites. This includes sites advocating human violence and hate crimes based upon religion, ethnicity, or country of origin.
12. **Distribution of Malware:** GEM prohibits the storage, distribution, fabrication, or use of malware including virus software, root kits, password crackers, adware, key stroke capture programs and other programs normally used in malicious activity. Programs used in the normal ordinary course of business are deemed acceptable. Example: Security Company hosting at GEM analyzes the latest root kit for new security analysis/software.
13. **Phishing:** GEM strictly prohibits any activity associated with Phishing or systems designed to collect personal information (name, account numbers, usernames, passwords, etc.) under false pretense. Splash pages, phishing forms, email distribution, proxy email or any relation to phishing activities will result in immediate removal.
14. **HYIP or Ponzi Schemes:** High Yield Investment Plans or Ponzi schemes with the intent to defraud end users are illegal and not allowed on the network. This includes hosting, linking and or advertising via email websites or schemes designed to defraud.

**Disclosure of Customer Information:** Occasionally, GEM is required by law to submit Customer information to others, including law enforcement officials, when presented with a valid subpoena or order from a court or governmental entity with proper jurisdiction and authority. Information requested is disclosed only as directed pursuant to the subpoena or order. GEM utilizes great care in keeping Customer information safe and private and will only release information described in the subpoena or order. GEM will notify Customer of the information request as, and if, allowed by the subpoena or order.

**Reporting Violation of the Acceptable Use Policy:** GEM accepts reports of alleged violations of this AUP via email sent to [abuse@gem-solutions.com](mailto:abuse@gem-solutions.com). Reports of alleged violations must be verified and must include the name and contact information of the complaining party, and the IP address or website allegedly in violation, and description of the violation. GEM owes no duty to third parties reporting alleged violations due to lack of privity in contract law. GEM will review all verified third party reports and will take appropriate actions as described within Methods of Resolution as set forth in Table D below or within its sole discretion.



## Acceptable Use Policy (AUP)

TABLE D: Methods of Resolution For Violations of GEM's Acceptable Use Policy

The ultimate goal of GEM is to balance the rights and interest of our Customers in the highly evolving Internet world. GEM understands the challenges of hosting companies, resellers, businesses, organizations and other customers who may have third party violations occur due to the nature of their business. The goal of our Methods of Resolution is to mitigate service interruptions while resolving potential violations under this AUP. Our staff is dedicated to working with the Customer in resolving potential violations, and is available via phone or e-mail. The Methods of Resolution below form the framework for resolving all potential violations. Timing for resolution differs according to the degree of the violation, the nature of the violation, involvement of law enforcement, involvement of third party litigation, or other related factors. Overall, GEM is dedicated to working with the Customer in resolving all potential violations prior to any service interruptions.

**Step 1: First alleged violation of AUP:** a ticket will be generated under GEM to obtain the Customer's master account with information regarding the potential violation of GEM's AUP. This is often a fact-finding e-mail requiring further information or notifying Customer of the potential violation and the required actions to resolve the issue.

**Step 2: Acknowledgement of violation of AUP:** a ticket is generated under the Customer's master user account with information specific to the violation. This ticket will also include any additional facts about the situation and will notify Customer of the action required to resolve the violation.

**Step 3: Violation of AUP disregarded, not properly addressed, or continuing violation if a ticket has been disregarded, not properly addressed, or resolved by the Customer for a specified period of time:** GEM will turn the public network port to the specified dedicated services off. Access to the dedicated services may then be achieved through the secure private service network for Customer resolution. As soon as the violation is addressed, the public access shall be restored and service will continue as normal.

**Step 4: Failure to address violation and resolve violation;** if Customer fails to address the violation AND resolve the violation, a suspension of services shall occur. This is a last resort for GEM and only results when the Customer completely fails to participate in GEM's resolution process. A permanent suspension of services includes reclamation of all dedicated services and the destruction of Customer's data.

Disclaimer: GEM retains the right, as its sole discretion, to refuse new service to any individual, group or business. GEM also retains the right to discontinue service to Customers with excessive and/or multiple repeated violations.

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## Privacy Agreement

GEM considers user privacy paramount. Additionally, GEM adheres to the Safe Harbor Principles as agreed to and set forth by the United States Department of Commerce and the European Union ("EU"), <http://export.gov/safeharbor/>. To demonstrate our firm commitment to privacy, the following agreement has been created to explain our policies and procedures in relation to all data collected.

### Types of Data Collected

GEM collects data related to our users through the following methods:

- ☒ Automated means such as communication protocols and cookies
- ☒ Online registration and online signup forms
- ☒ Sales inquiries and transactions
- ☒ Online Customer communications
- ☒ Offline communications and interactions
- ☒ Third party sources of information

Depending upon the method of collection and use, the data collected may include information about the user from forms, registrations and transactions (such as name, title, address, company, phone number and e-mail address), financial/transaction information (such as credit card, cvv, and payment information), information about use of GEM web sites (such as electronic communications protocols, web pages visited, and cookies) and user preferences and privileges.

### Electronic Communications Protocols and Cookies

GEM may receive data from you as part of the communication connection itself through the standard electronic greeting between your computer and our servers. This information often consists of network routing (where you came from), equipment information (browser type), internet protocol address, date and time. At this time our server will also query your computer to see if there are "cookies" previously set by gem-solutions.com to facilitate log in or other site navigation procedures. A "cookie" is a small piece of information sent by a web server to store in a web browser so it can later be read back from that browser.

Cookies: Some parts of the GEM site use cookies (including signup forms) to collect information about visitors' use of the web site and to facilitate return visits. The information collected from cookies is tracked to enhance security and/or to improve the functionality of the web site by avoiding duplicate data entry, facilitating navigation, and increasing the relevance of content.

Cookies on the site may collect the following information: a unique identifier, user preferences and profile information used to personalize the content that is shown, and user information to access GEM's user forums. Some cookies used by GEM.com may remain on the user's computer after they leave the web site, but the majority is set to expire within 30 -365 days. There may be some cookies on certain tools that are of longer duration. Cookies may also be of benefit to you by creating a more streamlined login process, keeping track of shopping cart additions or preserving order information between sessions. In the future, as we enable further customization of the site, cookies will help in ensuring that information provided to you will be the most relevant to your needs.

While we do not offer an opt-out on the site for cookies, browsers provide you with information and control over cookies. You can set your web browser to alert you when a cookie is being used. You can also get information on the duration of the cookie and what server your data is being returned to. You then have the opportunity to accept or reject the cookie. Additionally, you can set your browser to refuse all cookies or accept only cookies returned to the originating servers. Users can generally disable the cookie feature on their browser without affecting their ability to use the site, except in some cases where cookies are used as an essential security feature necessary for transaction completion.

### The Data We Collect and How We Use It

GEM collects data from users for the following purposes:

- ☒ To engage in transactions for service. Name, address, email, purchase details, and credit card/payment information may be collected and stored as part of the transaction history. The majority of the data collected under this category is contact information. GEM may need to share some of this data (address, payment) with credit card clearing houses, banking institutions, and other similarly situated Agents, who may require the information in order to complete the transaction (as used here, "Agents" are persons or companies who act on behalf of or under the direction of GEM) . GEM will not transfer information to any of its Agents unless it first either ascertains that the Agent subscribes to the Safe Harbor Principles or is subject to the EU Directive on Data Protection or another adequacy finding or enters into a written agreement with such Agent requiring that the Agent provide at least the same level of privacy protection as is required by the relevant Safe Harbor Principles.
- ☒ To provide future service and support. Information collected for this purpose is both contact data and information related to products and service/support requested. This information is also used to provide service, product update, and similar notices.
- ☒ To select content. Data may be collected to help create web site content and navigation that is most relevant and user friendly. This includes data collected as a result of site navigation, as well as data provided in forms.
- ☒ To respond to user inquiries and requests for information. This data includes registrations for online newsletters, opt-in mailing lists and specific requests for further information.
- ☒ To better tailor marketing to user needs. We may use information from user purchases and user-specified requirements to provide you with timely and pertinent notices of product releases and service developments that address your needs and specified requirements.
- ☒ To better respond to requests for service or quotes for product and equipment purchase. GEM will pass contact information to the appropriate GEM sales person, or reseller for follow-up related to GEM products or services.
- ☒ From referral "tell a friend" function. If a user elects to use our referral service for informing a friend about our site, we ask them for the friend's name and email address. GEM will automatically send the friend a one-time email inviting them to visit the site. GEM uses this data for the sole purpose of sending this one-time email and tracking the success of our referral program.
- ☒ As a result of your participation in interactive discussions and public forums. There are parts of the web site that permit you to participate in interactive discussions. Some of these are moderated; all are subject to access for technical reasons. GEM does not control the content that users post and





#### **Customer Portal, Customer Customization, Preferences and Opt-Out**

New Customers are automatically registered for access at <https://manage.gem-solutions.com>. The Customer portal allows Customers the ability to opt in (or out) of services and mailing lists. The Customer portal provides the Customers with control over their preferences for electronic information delivery.

GEM has also provided the Customer's master user the ability to manage the Customer's account or profile information. We maintain the data and allow the Customer's master user to update it at any time. To change this information, you must be a current Customer and login with a user ID and password and follow the prompts to "update my profile." We continue to expand the profile of services and information that you may access and update.

Please note that some email communications are not subject to general opt-out. These include communications related to downloads; communications about sales transactions; information about software updates, patches and fixes; disclosures to comply with legal requirements; and network upgrades or other related service maintenance.

If an individual's personal information is to be (a) disclosed to a third party who is not an Agent; or (b) used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual, then the individual will be notified prior to such disclosure and may opt out of having the information disclosed by responding to the email and/or author of the notification, where such information shall be clearly set forth.

#### **Security**

GEM is concerned with the security of the data we have collected and utilizes commercially reasonable measures to prevent unauthorized access to that information. These measures include policies, procedures, employee training, physical access and technical elements relating to data access controls. In addition, GEM uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. GEM does not process personal information in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual.

In the event that individual personal data is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notification, GEM will notify the affected individual of the breach by email or fax or, if GEM is unable to contact the individual by email or fax, then by U.S. mail. Notice will be given promptly, consistent with the legitimate needs of law enforcement and any measures necessary for GEM or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. GEM may delay notification if GEM or a law enforcement agency determines that the notification will impede a criminal investigation, and in such case, notification will not be provided unless and until GEM or the agency determines that notification will not compromise the investigation.

#### **Enforcement**

GEM has established internal mechanisms to verify its ongoing adherence to its privacy policy, including the Safe Harbor Principles. GEM also encourages individuals covered by this privacy policy to raise any concerns about our processing of personal information by contacting GEM at the address below. GEM will seek to resolve any concerns. GEM has also agreed to participate in the dispute resolution program provided by the European Data Protection Authorities.

#### **Policy Updates**

If we are going to use your data in a manner different from that stated at the time of collection, we will notify you via email. In addition, if we make any material changes in our privacy practices that do not affect user data already stored in our database, we will notify you by email or post a prominent notice on this web site notifying users of the change. In some cases, when we post the notice, we will also email users who have opted to receive communications from us, notifying them of the changes in our privacy practices.

We may update this policy from time to time to describe how new site features affect our use of your data and to let you know of new control and preference features that we provide.

#### **Contact Information**

Questions or comments about this privacy policy should be addressed to:

GEM Solutions, Inc.  
655 Deerfield Road  
Suite 100-407  
Deerfield, IL 60015  
phone: 312-343-4467  
email: [legal@gem-solutions.com](mailto:legal@gem-solutions.com)