

# Managed Server Rental Agreement

Communiqué Kaleidoscope, Inc.  
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Scottsdale, AZ 85258  
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Company: \_\_\_\_\_ Technical Contact: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

This agreement is made between Communiqué Kaleidoscope, Inc., located at 7349 N. Via Paseo del Sur, Suite 515-77 Scottsdale, AZ 85258; hereafter referred to as CommKal Hosting Solutions, and \_\_\_\_\_, located at \_\_\_\_\_, hereafter referred to as Client:

- 1) CommKal Hosting Solutions hereby rents to Client the following equipment:  
Dedicated Web Server: Specifications attached in Appendix I and/or attached Sales Order.
- 2) CommKal Hosting Solutions shall supply to Client all technical and administrative services that are required for Client's leased server to operate normally and continuously serve Client's web sites and other related services. CommKal Hosting Solutions shall **not** be responsible for technical and administrative services to repair errors that are directly or indirectly caused by Client's negligence or errors, where such negligence is determined by CommKal Hosting Solutions. CommKal Hosting Solutions shall not be responsible for supporting software that is not expressly listed in Appendix I. CommKal Hosting Solutions will install client -supplied software if requested but accepts no responsibility of any type for the operation, licensing, or support of client -supplied software.
- 3) The Client shall, during the rental term, keep and maintain the property in good condition and repair, and shall be responsible for any loss, casualty, damage, or destruction of said property notwithstanding how caused and Client agrees to return said property in its present condition, reasonable wear and tear excepted.
- 4) Any and all expendable supply items will be the responsibility of the Client.
- 5) The rental equipment shall at all times remain on the premises of CommKal Hosting Solutions or CommKal Hosting Solutions' affiliated vendors and suppliers.
- 6) All rental accounts must be paid for completely in advance by the anniversary date, or billed to a credit card. Past due bills will be incurred a 5% penalty. Should Client's account go past due by 15 days, Client's last month deposit will be used. Should Client not have paid by the end of the Anniversary month after payment was due, and CommKal Hosting Solutions already having utilized the last month's deposit toward hosting fees, Client's server will be taken offline until such time as Client brings payment current **including** a new last month's deposit being paid.
- 7) Client agrees to be bound by CommKal Hosting Solutions' Terms of Service agreement and all policies found on its web site. Client shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the equipment. Client shall be responsible for damages caused by his negligence and that of its associates. All alterations, additions, or improvements made to the equipment with the consent of CommKal Hosting Solutions shall become the property of CommKal Hosting Solutions and shall remain with and be surrendered with the equipment.
- 8) Client shall not assign this Agreement without CommKal Hosting Solutions's written consent.
- 9) Data protection and redundancy at the server level is Client's responsibility.
- 10) CommKal Hosting Solutions does not warranty any data, lost business, or any other items related to the Dedicated Server Rental. Commkal Hosting Solutions does not warrant that our implementation of this Dedicated Server Rental will be uninterrupted or error free. THE REMEDIES IN THIS AGREEMENT, AND LOCATED IN OUR SERVICE UPTIME GUARANTEE LOCATED ON OUR WEB SITE, ARE YOUR SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT WILL COMMKAL HOSTING

SOLUTIONS BE LIABLE FOR LOSS OF DATA OR FOR DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFIT), OR OTHER DAMAGES, WHETHER BASED IN TORT, CONTRACT, OR OTHERWISE. COMMKAL HOSTING SOLUTIONS WILL NOT BE LIABLE FOR ANY DAMAGES OR EXPENSES INCURRED BY CLIENT AS A RESULT OF ANY DEFICIENCY, ERROR OR DEFECT IN COMMKAL HOSTING SOLUTIONS' SERVICE, WHETHER DUE TO EQUIPMENT, HARDWARE, SOFTWARE, OR COMMKAL HOSTING SOLUTIONS' FAILURE TO CORRECT THE SAME. IN THE EVENT COMMKAL HOSTING SOLUTIONS FAILS TO PERFORM THE SERVICES SPECIFIED IN THIS AGREEMENT, YOUR SOLE REMEDY IS TO BE REFUNDED THE AMOUNT THAT YOU PREPAID FOR THE SERVICE DURING THE PERIOD COMMKAL HOSTING SOLUTIONS FAILED TO PERFORM THE SERVICES.

11) One rack space is packaged with this Dedicated Server Rental for the total price shown on the Order Form. Bandwidth allocations shall be reflected on the order form.

12) The rental period shall commence on the date the server is placed online by Commkal Hosting Solutions and made available for use to Client, and shall continue for a minimum term commitment of six (6) months. Upon completion of the initial 6 month lease term, this Agreement shall renew on a month-to-month basis until Client provides Commkal Hosting Solutions with 15 days written notice of cancellation. Upon cancellation of this Agreement, the property shall be promptly surrendered and delivered to Commkal Hosting Solutions by the Client. If Client retains the equipment past the termination date, this agreement shall automatically renew for an additional one-month rental period. Commkal Hosting Solutions may cancel this agreement with 30 days written notice to Client, except where Client has violated the terms of this Agreement or of Commkal Hosting Solutions' Terms of Service, in which case no advanced notice is required.

13) Client will pay to Commkal Hosting Solutions a deposit of the last month's rental fees. This deposit will be used to pay for the last month of server rental. If Client pays for its last month rental prior to canceling, the last month rental Deposit shall be refunded to Client within 30 days of this agreement's termination date, providing equipment is returned to Commkal Hosting Solutions in resalable condition.

14) Commkal Hosting Solutions respects data privacy of Client's data. No data will be knowingly released or utilized without Client's permission, except in cases where Commkal Hosting Solutions is required to release the data to law enforcement agencies under direction of subpoena or other intervention.

15) Commkal Hosting Solutions will assist the Client with any application software installation, management, or troubleshooting, providing Client supplies a valid copy of the software's licensing certification, and also providing that Commkal Hosting Solutions has sufficient expertise in the particular application package. Commkal Hosting Solutions is not responsible for errors, conflicts, performance impact, or other incidental results of installing a client -supplied software on a Dedicated Server.

16) Client can choose to cancel the server management provisions of this contract at any time after the initial 6 month term, providing 15 days advanced notice is supplied. Once server management is cancelled by Client, Commkal Hosting Solutions shall bill Client \$35 per 15 minutes of work done on Client's dedicated server.

17) Commkal Hosting Solutions may change/update the terms of this Agreement at any time, provided written notice of the change is provided to Client 30 days before the effective date of the change. Notifying Commkal Hosting Solutions of any address change (physical, mailing, and electronic mail) or other changes in contact information (telephone or fax) is Client's responsibility.

By signing below and submitting this contract to Communiqué Kaleidoscope, Inc., I acknowledge and agree that I will enter into a six (6) month non-refundable contract to lease this Dedicated Server, as selected and indicated on the enclosed Order Form. I further agree to abide by all policies in this agreement, related paperwork, and located on the Commkal Hosting Solutions web site at <http://www.commkal.com/>

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_  
**Business Name:** \_\_\_\_\_

## APPENDIX I

Below are the minimum configurations of Commkal Hosting Solutions Managed Servers as of the date of this Agreement. In many cases, we may substitute higher/better parts if indicated parts are not available from our supplier. Additional adjustments to server configuration are indicated on Client's order form or Sales Order.

**The Managed Server which is being leased by Client will be indicated on Client's order form.**

<b>Server I</b>	<b>Server II</b>	<b>Server III</b>
Intel PIII 1.4 Ghz CPU	Dual Intel PIII 1.4 GHz CPU	Dual Intel Xeon 2.4 GHz CPU
256 MB RAM	512 MB RAM	1 GB RAM
60 GB ATA 133 Hard Drive	2x36 GB SCSI 10,000 RPM Hard Drives (36 GB usable)	3x36 GB SCSI 15,000 RPM Hard Drives (72 GB usable)
No RAID	RAID1	RAID5
Windows NT 4.0 - or - Windows 2000 AS	Windows NT 4.0 - or - Windows 2000 AS	Windows NT 4.0 - or - Windows 2000 AS
Microsoft IIS 4.0 or 5.0	Microsoft IIS 4.0 or 5.0	Microsoft IIS 4.0 or 5.0
IMail 7 Mail Server	IMail 7 Mail Server	IMail 7 Mail Server
DeepMetrix LiveStats 50 user license	DeepMetrix LiveStats 50 user license	DeepMetrix LiveStats 50 user license
Microsoft Access 2002	Microsoft Access 2002 MS SQL Server 7.0 or 2000	Microsoft Access 2002 MS SQL Server 7.0 or 2000
Supports FrontPage® '98 - 2002	Supports FrontPage® '98 - 2002	Supports FrontPage® '98 - 2002
Serv-U FTP Server	Serv-U FTP Server	Serv-U FTP Server
MS DNS	MS DNS	MS DNS

We also include other supporting items such as Virus Protection software, ASP components, and other server utilities. These items are not listed, as the specific items may vary depending on server configuration and your specific needs.