

ADDENDUM

Dedicated Servers

This Addendum is part of Agreement, "Flaming Ltd – Terms"

Under this Agreement We provide Internet connectivity services (the "Bandwidth"), the equipment (the "Server"), the availability of space to store and operate such equipment (the "Space") and the licensing of software (the "Software"), together comprising the dedicated server package under this Agreement (together, the "Services")..

ADS 1. DEFINITIONS:

All previous definitions in this agreement are utilised in conjunction with this Addendum in relation to the Dedicated Server service, defined herein, unless the context otherwise requires:

- 1.1 **"Agreement"** means The Resellers Agreement in full referenced above, inclusive of all addendums, attachments and relevant Terms, conditions and applicable application form and AUP;
- 1.2 **"Access Line"** means the telecommunications circuit that the Customer uses to obtain telecommunications services over the public switched telephone network at the Premises as notified by the Customer to Flaming Ltd;
- 1.3 **"Commencement Date"** means the date when the Customer first receives the live Service.
- 1.4 **"Customer Apparatus"** means apparatus belonging to the Customer not forming part of the Equipment but which may be connected to the Equipment;
- 1.5 **"Equipment"** means any apparatus or equipment provided by Flaming Ltd or any third party to the Customer at the Premises to enable provision of the Service;
- 1.6 **"Minimum Period"** means
 - (a) thirty (30) days unless otherwise stated within this addendum.
- 1.7 **"Flaming Ltd Servers"** means the Dedicated Server system which Flaming Ltd runs and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by Flaming Ltd, from a third party
- 1.8 **"Person"** means an individual or a body corporate or unincorporated or a partnership and "Persons" shall be construed accordingly;
- 1.9 **"Services"** hereafter and related to this addendum means those manual and automatic Dedicated Server and all related services as described on the date hereof and within the Company's website www.flamingltd.com together with any increased or improved services of such a nature that may be provided by the Company.

ADS 2. GENERAL**2.1**

References to clauses and sub-clauses are, unless otherwise stated, references to clauses and sub-clauses within this Agreement.

2.2

The headings within this Addendum are for convenience only and shall not affect its interpretation.

ADS 3. PROVISION OF SERVICE:**3.1**

Flaming Ltd will provide the Service to the Customer in accordance with the Conditions of this Agreement and addendums and within the Term and Conditions found on the Flaming Ltd website in relation to the customer.

3.2

Flaming Ltd shall use our reasonable endeavours to make available to the Customer at all times the Server and the Services determined within this addendum.

3.3

Except as otherwise expressly permitted in these Conditions, and in addition to other restrictions herein, the Customer may not:

3.3.1 Transfer rights to the use of the Service to any third party, whether in whole or in part;

3.3.2 Disclose Service features, errors or viruses to any third party without the prior written consent of Flaming Ltd;

3.3.3 Use the Service except in conjunction with Flaming Ltd recommended operating environment, notified by Flaming Ltd or modifies the Service without Flaming Ltd prior written consent.

3.3.4 Flaming Ltd reserves the right to change the Customer's password at any time at its sole discretion.

3.4

Flaming Ltd shall reserve the right to suspend the Services at any time and for any reason, if deemed necessary, without notice. If such suspension occurs and lasts or is to last for more than 7 days you will be notified of the reason.

3.5

Flaming Ltd may occasionally have to interrupt the Service or change the technical specification of the Service for operational reasons or because of an emergency. Flaming Ltd will give the Reseller as much notice as possible of any planned interruption of the Reseller's Service. Flaming Ltd shall not, in any event, be liable for interruptions of Service or down-time of the Server incurred by us or third parties. In these circumstances the Reseller shall have no claim against Flaming Ltd for any such interruption.

ADS 4. SERVICE LEVEL AGREEMENT / CODE OF PRACTISE:**4.1.**

The Service Level Agreement hereinafter referred to as the SLA sets out our aims with regard to the level of service provided.

4.2.

Our failure to provide meet an aim set out in the SLA will not constitute a breach of this contract.

4.3.

For the purpose of the 'Network Uptime' aim, network down-time is defined as 100% packet loss occurring in the transmission of data from your Server hosted in our data centre to the Internet backbone. Events which do not constitute network down-time include but are not limited to:

4.3.1.

a problem in the Customers access provider's network or that of their upstream providers which prevents you from accessing the Flaming Ltd network.

4.3.2.

a problem with your Server's hardware or software which renders it or an application or service on it inoperable.

4.3.3.

the period during which network protocols such as STP, OSPF and BGP are re-converging after an equipment or link failure.

4.4.

In the event that the Customer wishes to make a claim for a service credit in accordance with the SLA. The Customer will notify Flaming Ltd including full details of and the time at which the incident occurred within 4 days of the incident to which the claim relates occurring.

4.5.

Flaming Ltd reserves the right to determine whether any service credit is due.

4.6.

Should Flaming Ltd determine that a service credit is due, it will be provided in the form of additional days of service up to a maximum of 30 days in any 30 day period. Only charges for the basic Server rental will be waived as a result of a service credit under the SLA. Charges for domain names, additional data transfer and optional extras added to the Customers Server will not be waived. Service credits will not be provided in the form of cash or equivalent.

ADS 5. SERVER HARDWARE:

5.1.

Flaming Ltd will be at all times the owner of the servers.

5.2.

The Server shall be installed and operated in the Space by Us. You will have no right of physical access to the Server or the Space.

5.3.

We shall have no liability for any loss or damage to any data stored on the Server.

5.4.

The Customer acknowledges that, Flaming Ltd cannot guarantee that the Server will be free from defects, operate uninterrupted or without failure. Flaming Ltd will make all reasonable endeavours to have available to the Customer at all times the Services but Flaming Ltd shall not, in any event, be liable for interruptions of service or down-time of the Server and we shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

5.5.

Should Flaming Ltd become aware of a Server fault, we will at our option repair the Server or provide an equivalent Server as a replacement as soon as practicably possible.

5.6.

Any replacement Server will be provided in the default configuration as the Server was originally supplied. We do not warrant that any data, content or settings present on the original Server will be transferred to the replacement.

ADS 6. SERVER SOFTWARE

6.1.

Flaming Ltd grant the Reseller a non-transferable, nonexclusive license to use the Software, in object code form only for internal needs, solely on the Hardware provided, and in conjunction with the said Services.

6.2.

The Reseller agrees not to:

6.2.1.

Copy the Software.

6.2.2.

Reverse engineer, decompile, disassemble or otherwise attempt to derive source code from the Software.

6.2.3.

Sell, lease, license, transfer or sublicense the Software or the documentation.

6.2.4.

Write or develop any derivative or other software programs, based, in whole or in part, upon the Software provided by Flaming Ltd.

6.3.

Any third party software is supplied to the Customer on the basis of the relevant third party's license terms with which you agree to comply.

6.3.1.

In the case of Microsoft software specifically, the Customer will agree to the general terms of use in Schedule A and warrant that your use of the software will comply with the license provided as detailed in Schedule B. These are found in the terms & conditions within the Flaming Ltd website. By signing this agreement you are confirming that you have done so.

6.4.

The Customer is solely responsible for virus scanning the Software and Flaming Ltd give no warranty that the Software will be free from viruses.

ADS 7. SUPPORT AND MANAGEMENT SERVICES

7.1.

Flaming Ltd will install the Software detailed in the product specification onto the Hardware in our standard configuration free of additional charge.

7.2.

Flaming Ltd will endeavour to apply security patches or take mitigating action such as blocking certain network traffic to maintain the integrity of the Server when we are made aware of security vulnerability in Software installed as standard which we deem a threat considering the intended use of the Services for web site hosting. Flaming Ltd do not warrant that the Software will be free from defects or vulnerabilities nor that the Server will be free from unauthorised users or hackers.

7.3.

Flaming Ltd are not obliged to install onto the Server any additional software for you or modify the configuration of existing software from its default. The Customer acknowledges that should we agree to do so, a charge may be made to cover employee time.

7.4.

Flaming Ltd provide technical support relating to the Server and Software physically functioning. We do not offer technical support for application specific issues such as CGI programming, HTML or any other such issue.

7.5.

Flaming Ltd's obligation to provide support and management services will not extend to:

7.5.1.

Software or systems not installed as standard by Flaming Ltd.

7.5.2.

Software or systems configured or modified by the customer other than through the provided web based control panel.

7.5.3.

Correction of faults arising from your failure to comply with instructions and or recommendations provided by Flaming Ltd directly or through documentation and manuals supplied.

7.5.4.

Rectification of lost or corrupted data.

7.6.

Flaming Ltd may at any time and from time to time improve, correct or otherwise modify all or any of the Services (including substituting Software and/or Server with software or equipment of similar specification) provided that such modification does not materially affect provision of the Services to the Customer. We will endeavour to give you reasonable notice of any such modification, where this is reasonably practicable.

ADS 8. NETWORK CONNECTIVITY and BANDWIDTH / DATA TRANSFER

8.1.

Flaming Ltd will provide a means for the customer to monitor the data transfer usage of the Server. You accept that if the Server exceeds its data transfer quota in any billing period, we will charge the customer for the additional data transfer at our standard rate.

8.2.

A Data Blocks will not be valid and will not increase your data transfer quota for you it has been paid for in full. A Data Blocks cannot be shared across multiple servers or months, or used to pay for data transfer consumed prior to the Data Blocks being purchased or paid for.

8.3.

Any access to other networks through the Services must comply with the rules appropriate for those other networks.

8.4.

Flaming Ltd may assign to the Server on a temporary basis a number of Internet Protocol Addresses ("IP Addresses") from the address space assigned to Us by the RIPE. You acknowledge that the IP Addresses are the sole property of Flaming Ltd, and are assigned to you as part of the Services, and

agree that you will have no right to IP Addresses upon termination of this Agreement. We reserve the right to change the IP Address assignments at any time.

8.5.

Flaming Ltd makes no representation and gives no warranty as to the accuracy or quality of information received by any person via the Services.

ADS 9. DATA BACKUP

9.1.

Unless you have purchased a data backup product as an additional cost option, Flaming Ltd will make no backups of the data stored on the Server.

9.2.

If a Customer purchases a data backup product Flaming Ltd will endeavour to make backups of the data stored on the Server and make them available to you in accordance with the specification of the data backup product. However, Flaming Ltd do not warrant that any data will be backed up correctly, or that any successful restoration of data will be possible.

9.3.

Regardless of whether you purchase a data backup product, We shall have no liability for any loss or damage to any data stored on the Server or backup mediums.

9.4.

We recommend that the Customer make a backup of all data on the Server regardless of whether Customer has purchased a data backup product.

ADS 10. RISKS

10.1.

The Customer acknowledges that, by definition, access to the Internet and other communication media is associated with risks concerning authentication, data security, privacy, availability of services, reliability of transmission etc. The Customer agrees to accept full responsibility arising from such risks and the consequences of the Customers usage of Flaming Ltd Dedicated Server and related services herein and contravening clause 5 within the agreement.

ADS 11. CUSTOMERS LIABILITY

11.1.

The Customer agrees to abide to all laws and regulations applicable to the services provided by him. The Customer shall be liable for all consequences and costs arising out of any breaches against such law or regulations perpetrated by him, or under his direction or on his behalf.

11.2.

The Customer acknowledges and warrants that the Service shall be used in the way intended and defined within this agreement and related addendums. Therefore the Customer shall comply with all relevant rules and regulations as in defined in clause ADX3 herein, regarding treatment, use and exploitation of private personal data and other personal information of the potential End User. Such compliance shall include without limit, the right for the recipient to be informed and their right to access this information and to modify it or to "opt out" completely of the Flaming's database along with the manner in which they can request this.

11.3.

The Customer hereby agrees to indemnify and hold Flaming Ltd, and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including in particular, without limitation, reasonable legal fees, made by any Person or Persons due to or arising out of the Customers services, use of the services, connection to the Services, breach of this Agreement and or the Customers violation of any rights of any other Person or Persons.

ADS 12. PRICING AND PAYMENT

12.1.

Flaming Ltd shall provide the Customer with the Service for the fees as defined in writing and or the availability through the control panel or Flaming Ltd website. These fees are payable in advance from the start of the Minimum Period of service. Payment will be due on the date specified on the invoice.

12.2.

Subject to our discretion we will invoice you with credit terms of 30 days net, on an Annual basis only. Flaming Ltd may charge interest on all outstanding amounts on a daily basis at the rate of 3% per annum above the base lending rate, from the date of the invoice until the date of actual payment or judgement has been enforced.

12.3.

We reserve the right to change the rates at any time. Pricing is guaranteed for the period of pre payment, any changes made during will be made after the prepaid period. Any installation fee as specified to you in writing, website or through your control panel, is payable in advance by credit card or as reference in clause 6.5 of the main agreement

12.4.

In the event that the Flaming Ltd increases its fees, you will receive prior notice as determined within the agreement.

12.5.

Payment is due each anniversary month, quarter or year following the date the Services were established until closure notice is given in accordance with ADS 13. If you choose to pay by credit or debit card you authorise Flaming Ltd to debit your account renewal fees and excessive charges from your card..

12.5.1. All payments must be in UK Pounds Sterling.

12.5.2. If your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge liable at the time.

12.5.3. Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we shall be entitled forthwith to suspend the provision of Services to you.

12.5.4. Reworking Charge - If the Customer consents to a Carrier engineer making good any existing non-Carrier installed wiring to make it fit for installation of the Service.

12.5.5. Order Cancellation - If the Customer requests the cancellation of the Flaming Ltd ADSL service five (5) or less days prior to the arranged installation date.

ADS 13. INTELLECTUAL PROPERTY RIGHTS**13.1.**

It is agreed and acknowledged by the parties that all communication media and systems associated with the web site www.flamingltd.com, the control panel, client area and the underlying services remain the property of the Company, its suppliers or partners as appropriate. By using the services, the Customer shall not obtain any rights in the infrastructure, content, Intellectual Property, or software associated with the services.

13.2.

To run in conjunction with clause 4 of the Customer agreement.

ADS 14. AGREEMENT AND ADDENDUM AMENDMENTS**14.1.**

Flaming Ltd reserve the right to add to and/or amend the Conditions at any time. Such changes shall be notified to the Customer by posting in the news section of Flaming Ltd's Web site. Changes in this manner shall be deemed to have been accepted if the Customer continues to use the Service after a period of Fourteen (14) days from the date of posting on the Web site.

ADS 15. DURATION AND TERMINATION**15.1.**

This Addendum shall come into force on the date hereof and continue thereafter unless and until terminated by either party in reference to clause 26 of the Customer agreement including sub clauses.

15.2.

Flaming Ltd reserve the right to suspend the Services and/or terminate this Agreement forthwith without notice to you if you:

15.2.1.

Fail to pay any sums due to Flaming Ltd by due date determined by invoice or in writing.

15.2.2.

Break any of these terms and conditions.

15.2.3.

If the Customers company as a Sole trader go into insolvent liquidation and or the appointment of an administrator, administrative receiver or enter into a voluntary arrangement with your creditors.

15.3.

No refunds will be made under any circumstances for Services suspended in accordance with ADH 12.

15.4.

In the event of this agreement being suspended and or terminated, the customer will not be entitled to a pro rata refund based upon the remaining period of prepayment.

15.5.

The Customer may cancel the Services at any time in writing to include your account username and password. Flaming Ltd will cancel the Services within 2 working days of receipt of your request.

15.6.

During the first 7 days of Services, the customer is entitled to a refund of the basic hosting plan rental

fee should You decide to cancel the Services. No full refunds or pro rata refunds will be made after the first 7 days of service.

15.7.

The customer may cancel the Services at any time in writing to include your account username and password. Flaming Ltd will cancel the Services within 2 working days of receipt of your request.

15.8.

The customer may cancel the Services at any time in writing to include your account username and password. Flaming Ltd will cancel the Services within 2 working days of receipt of your request.

15.8.1.

Domain name registration fees, charges for additional data transfer and charges for optional extras added to your account are not refundable on this basis.

15.8.2.

You will not be entitled to a refund on this basis if you have previously held an account with Flaming Ltd.

15.9.

Where payment has been made by credit or debit card, any refund will only be issued to the same credit or debit card.

15.10.

On termination of this Agreement or suspension of the Services we shall be entitled immediately to stop access to your Web Site and to remove all data located on the Server.

ADS 16. ENTIRE AGREEMENT

16.1.

These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement. We reserve the right to alter these Terms & Conditions and our Acceptable User Policy without consent or agreement from our customers.

ADS 17. SEVERABILITY

17.1.

If any of the provisions of this Agreement and Addendums is found by any Court to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and Addendums and the remaining provisions of this

For and on Behalf of:-

Company: _____

Signature: _____

Date: _____

Name (print): _____

Company Reg: _____ *(if applicable)*