

FLAMING LTD Online Backup - The Services

Software: Attix5 Backup Professional Server Edition (SE) & associated Plugins
Attix5 Backup Professional Desktop & Laptop (D&L) Edition
Attix5 Backup Professional Monitoring and Deployment
Attix5 Backup Professional Storage Platform

The "Services" means the service whereby the Customer will be offered the use of the Software to securely backup and retrieve their data on-line via any tcp/ip connection to the FLAMING LTD Online Backup storage platform, where such backed up data will be stored. The FLAMING LTD Online Backup storage platform is hosted in a secure environment.

The Customer can then select and schedule their backup set. The Customer can restore their data whilst online. After the initial backup, incremental backups are done for a two calendar month period. At the end of that period, the oldest month is consolidated into a single backup volume, with the last version of all files selected at the end of that month, until a further month has elapsed, when the cycle is repeated. Customers of the service are able to access specific backups up to the month end consolidation allowing restores to be effected from any point within the cyclic one to three month window.

The volume of data held on the Storage Platform, including all the daily changes and the month end consolidation is, on average, equivalent to the Allocated Limit of Data Storage (as shown within the Limit Column of the Monitor Console). Should the volume of data, for any one account, stored on the Storage Platform exceed the Allocated Limit of Data Storage set for that account by more than 20%, then Flaming Ltd reserves the right to suspend that account or to charge for the quantity of data that exceeds the Allocated Limit of Data Storage set for that account.

IMPORTANT: The Customer will be provided with the client application. The Customer will then be required to provide name, password and encryption key. This encryption key will not be stored by the system. Accordingly, if the Customer loses this information, the data cannot be recovered.

TERMS AND CONDITIONS

1. PRIVATE DEFINITIONS

"Flaming Ltd" "we" "us" means Flaming Ltd. "you" means the Customer who is the subject of the Flaming Ltd Services Agreement ("TSA"). "the Software" means all or any computer programs sold or leased by Flaming Ltd to you, whether such programs are produced by Flaming Ltd, or are sold or leased as distributor or agent of a third party whether by licence or through the public domain. "The Internet" means the worldwide collection of equipment and systems that include but is not restricted to access to items of service ("the Internet Service"). "The Services" means the FLAMING LTD Online Backup Managed Solution as outlined in the Description of Services above and specified in the TSA.

2. FLAMING LTD OBLIGATIONS

When the Services are operational, and connected to the Internet Service, we shall make all reasonable efforts to ensure that the Services are maintained and are fully available to you 24 hours x 365 days per year. Notwithstanding the foregoing, in the event that in any calendar month following commencement of the Services, we are unable to provide 99.5% connectivity to the

Internet (calculated on a 24 hour basis) (hereinafter "the Failure") you shall be entitled to Service Credits as per the FLAMING LTD Online Backup Service Level Agreement.

3. PAYMENT

Save as appears below, the charges set out on the TSA are non-refundable and for a minimum period of twelve (12) months from the date of your signature to the TSA. Thereafter the charges may be reviewed on an annual basis. You must pay in advance either quarterly or annually as specified in the TSA. Unless otherwise stated, all charges are exclusive of VAT. Where any payment from you remains due and unpaid we will be entitled to charge interest at 2% above Barclays Bank plc base rate for the time being accrued daily. You may not withhold payment for the Services by reason of any outstanding claim under this or any other agreement with us.

All payments are non-refundable and non-returnable. You agree to pay us on presentation of our invoice. Any delay in payment will entitle us at our sole election to suspend the service and/or to apply liquidated damages. Save as allowed by law, payment due for services provided shall not be withheld on grounds that any claim is outstanding.

4. RESTRICTION OF LIABILITY

You hereby confirm that you have not relied upon any representation made by us or on our behalf which has induced you to enter into this agreement except as is provided herein. If we delay or fail to perform our obligations under this agreement our maximum liability is limited to the amount already paid by you under this agreement for the Services (excluding VAT or other tax and the cost of any equipment provided under this agreement and which shall be owned or controlled by you).

Subject to this we shall not be liable to you for any claims loss damage (including consequential loss or damage) of whatsoever nature and howsoever caused except as is provided by statute. Except for the terms of this agreement (or required by law) no other conditions warranties terms representations and undertakings apply. If we are prevented from providing the Services for any reason beyond our reasonable control, we may suspend or delay delivery of the Services and shall not be held responsible or liable to you for our inability to deliver them. We cannot guarantee the proper delivery of any e: mail message or other data item once it has left the confines of our network, and similarly we cannot guarantee that data traffic will be delivered or that its contents will be held secure once it passes from our control.

5. UNLAWFUL USE OF THE SERVICE

You warrant and undertake that neither you nor any person authorised by you will knowingly publish or transmit over the Internet nor store on the FLAMING LTD Online Backup Storage Platform any material that is obscene, threatening, defamatory or likely to cause offence or which in any way infringes the intellectual property rights of another party. You hereby agree to indemnify and hold us harmless from any and all demands losses claims proceedings damages costs and expenses including legal fees arising out of any claim against us in relation to such materials.

6. DURATION

This Agreement shall commence on the Services Commencement Date and shall, subject to the other provisions hereof, continue for a minimum period of twelve (12) months ("initial period"), whereafter it shall be automatically renewed for a further twelve (12) months unless notice of termination in writing is given by either you or us not less than ninety (90) days prior to the end of any twelve (12) month period.

7. TERMINATION

We reserve the right to terminate this Agreement at any time if you become the subject of a receivership winding up administration or bankruptcy order (or a petition is presented in respect of any of these) or if it otherwise appears to us that you are insolvent and unable to pay your debts as they fall due. We shall also be entitled to terminate this Agreement in the event that you

commit a material breach of this Agreement and fail to remedy the same within 30 days of receipt of written notice from us. Any termination shall be without prejudice to our other rights or to your liability for amounts payable under this agreement.

8. GENERAL

This agreement contains all the terms agreed between us and supersedes any previous communications representations or agreement by either of us including any terms and conditions on your order. No modification of this agreement will be accepted unless made in writing and signed by one of Flaming Ltd's Directors. Until we acknowledge acceptance of the deposit/advance payments requested in the TSA we will not be bound by the TSA. Our acceptance will form a contract subject only to these Terms and Conditions.

We may assign our rights and obligations under this agreement. You may only assign your rights without further payment only with our written consent (not to be unreasonably withheld) where the assignment is to a parent affiliate or subsidiary corporation purchasing all or substantially all your assets or where you merge with another corporate entity or partnership providing in each case the proposed assignee is not in our reasonable opinion a competitor.

The waiver by either party of any breach of these Terms and Conditions will not prevent the subsequent enforcement thereof and shall not be deemed a waiver of any subsequent breach. If any part of this agreement is adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect the remainder of this agreement which shall remain in full force and effect. Notices may be given by facsimile, first class mail or by delivery to the address shown on the TSA or any other address specifically in writing for the purpose of the TSA. English Law shall govern this Agreement and the forum for settling any dispute shall be the English Court.

Flaming Ltd
Position: Director
Signature:
Print: Sab Khatri
Date:

End User/ Client
Position:
Signature:
Print:
Date: