

# Kinetic Internet Limited

Company No: 4470080

## **ADDENDUM – Dedicated Server Terms and Conditions**

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KINETIC INTERNET is an International Communications company that provides Dedicated Server services. The customer wishes to obtain those services from KINETIC INTERNET in accordance with its related terms and conditions within this addendum and in conjunction with the main Terms and Conditions further defined.

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 Customers 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 KINETIC INTERNET ;
- 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 KINETIC INTERNET 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 "KINETIC INTERNET System" means the Dedicated Server system which KINETIC INTERNET runs and, for the purpose of this Agreement, any apparatus leased by, or otherwise obtained by KINETIC INTERNET , 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.kinetic-internet.co.uk](http://www.kinetic-internet.co.uk) together with any increased or improved services of such a nature that may be provided by the Company.
- 1.10 "Customer" referring to client end user.

### 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

KINETIC INTERNET 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 KINETIC INTERNET website.

3.2

KINETIC INTERNET 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 KINETIC INTERNET ;

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

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

### 3.4

KINETIC INTERNET 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

KINETIC INTERNET may occasionally have to interrupt the Service or change the technical specification of the Service for operational reasons or because of an emergency. KINETIC INTERNET will give the Customer as much notice as possible of any planned interruption of the Customer's Service. KINETIC INTERNET 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 Customer shall have no claim against KINETIC INTERNET 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 Customer access provider's network or that of their upstream providers which prevents you from accessing the KINETIC INTERNET 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 KINETIC INTERNET including full details of and the time at which the incident occurred within 7 days of the incident to which the claim relates occurring.

### 4.5.

KINETIC INTERNET reserve the right to determine whether any service credit is due.

### 4.6.

Should KINETIC INTERNET 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.

KINETIC INTERNET 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 acknowledge that, KINETIC INTERNET cannot guarantee that the Server will be free from defects, operate uninterrupted or without failure. KINETIC INTERNET will make all reasonable endeavours to have available to the Customer at all times the Services but KINETIC INTERNET 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 KINETIC INTERNET 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.

KINETIC INTERNET grant the Customer 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 Customer 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 KINETIC INTERNET.

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 KINETIC INTERNET website. By signing this agreement you are confirming that you have done so.

6.4.

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

ADS 7. SUPPORT AND MANAGEMENT SERVICES:

7.1.

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

7.2.

KINETIC INTERNET 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. KINETIC INTERNET 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.

KINETIC INTERNET 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.

KINETIC INTERNET 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.

KINETIC INTERNET do not provide technical support for the Customers Customers/End users.

7.6.

KINETIC INTERNET obligation to provide support and management services will not extend to:

7.6.1.

Software or systems not installed as standard by KINETIC INTERNET.

7.6.2.

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

7.6.3.

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

7.6.4.

Rectification of lost or corrupted data.

7.7.

KINETIC INTERNET 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. DOMAIN NAME REGISTRATION and TRANSFERS:

8.1.

KINETIC INTERNET make no representation that the domain name the Customer wishes to register, is capable of being registered by or for you or that it will be registered in the name the Customer designates. You should therefore not assume registration of your requested domain name(s) until you have been notified that it has or they have been registered. Any action taken by you before such notification is at your risk.

8.2.

The registration and use of the domain name is subject to the terms and conditions of use applied by the relevant Registry; you shall ensure that you are aware of those terms and conditions and it is the Customers responsibility to take the necessary steps to insure the end user is aware and able to comply with them.

8.3.

The Customer shall have no right to bring any claim against us in respect of refusal to register a domain name.

8.4.

Any administration charge paid by the Customer to us shall be non-refundable notwithstanding refusal by the Registry to register your desired name.

8.5.

We shall have no liability in respect of the use by you of any domain name; any dispute between the Customer and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, we shall

be entitled, at our discretion and without explanation, to withhold, suspend or cancel the domain name. KINETIC INTERNET will be entitled to make representations to the relevant Registry but reserve the right to take part in any such dispute.

8.6.

KINETIC INTERNET shall not release any domain to another provider unless full payment for that domain has been received.

8.7.

By registering a .uk domain name, you enter into a contract of registration with Nominet UK on the terms and conditions supplied on their website <http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration> This is a separate contract to any arrangement you may have with KINETIC INTERNET for the provision of internet services. It is the responsibility of the Customer, by signing this agreement and addendum, to confirm you are aware of those terms and conditions and able to comply with them prior to proceeding with your order.

8.8.

Domains transferred or purchased through KINETIC INTERNET that are part of an order or hosting plan do not have an outgoing transfer fee, providing any outstanding fees are paid as mentioned in ADH 4.6

8.9.

The Customer must be aware of the supplementary terms and conditions for any domain with endings other than .uk set down by the registrar at time of registration. <http://www.enom.com/terms/>

8.10.

The Customer is responsible to read the full details on the ICANN domain dispute policy document - [www.icann.org/dndr/udrp/policy.htm](http://www.icann.org/dndr/udrp/policy.htm)

#### ADS 9. NETWORK CONNECTIVITY and BANDWIDTH/DATA TRANSFER

9.1.

KINETIC INTERNET 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 you for the additional data transfer at our standard rate.

9.2.

A Data Blocks will not be valid and will not increase your data transfer quota for you until 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.

9.3.

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

9.4.

KINETIC INTERNET 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 KINETIC INTERNET, 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.

9.5.

KINETIC INTERNET make no representation and give no warranty as to the accuracy or quality of information received by any person via the Services.

#### ADS 10. DATA BACKUP

10.1.

KINETIC INTERNET will make a backup of the data stored on the Server each night. As an additional precaution we recommend that you make your own backups.

10.2.

If the Customer purchases a data backup product, KINETIC INTERNET 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, KINETIC INTERNET do not warrant that any data will be backed up correctly, or that any successful restoration of data will be possible.

10.3.

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.

10.4.

We recommend that the Customer make a backup of all data on the Server.

#### ADS 11. RISKS

11.1.

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 usage of KINETIC INTERNET Dedicated Server and related services herein and contravening clause 5 within the agreement.

#### ADS 12. CUSTOMERS LIABILITY:

12.1.

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.

12.2.

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 ADS3 herein, regarding treatment, use and exploitation of private personal data and other personal information.

12.3.

The Customer hereby agrees to indemnify and hold KINETIC INTERNET, 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 13. PRICING AND PAYMENT:

13.1.

KINETIC INTERNET shall provide the Customer with the Service for the fees as defined in writing and or the availability through the control panel or KINETIC INTERNET 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.

13.2.

Subject to our discretion we will invoice you with credit terms of 30 days net, on an Annual basis only. KINETIC INTERNET 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.

13.3.

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, is payable in advance by Bank Transfer.

13.4.

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

13.5.

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 KINETIC INTERNET to debit your account renewal fees and excessive charges from your card.

13.5.1. All payments must be in UK Pounds Sterling.

13.5.2. 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.

13.5.3. 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.

#### ADS 14. INTELLECTUAL PROPERTY RIGHTS:

14.1.

It is agreed and acknowledged by the parties that all communication media and systems associated with the web site [www.kinetic-internet.co.uk](http://www.kinetic-internet.co.uk), the control panel 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.

14.2.

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

#### ADS 15. AGREEMENT AND ADDENDUM AMENDMENTS:

15.1.

KINETIC INTERNET 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 Legal section of KINETIC INTERNET'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 16. DURATION AND TERMINATION:

16.1.

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 Customers agreement including sub clauses.

16.2.

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

16.2.1.

Fail to pay any sums due to KINETIC INTERNET by due date determined by invoice or in writing.

16.2.2.

Break any of these terms and conditions.

16.2.3.

If the Customers company or the Customer as an individual or 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.

16.3.

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

16.4.

In the event of this agreement being suspended and or terminated, the Customer will be entitled to a pro rata refund based upon the remaining period of prepayment.

16.5.

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

16.6.

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.

16.7.

Where payment has been made by credit or debit card, any refund will only be issued to the same credit or debit card. 16.8.

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 17. ENTIRE AGREEMENT:

17.1.

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 18. SEVERABILITY:

18.1.

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