



## **Dedicated Server Terms and Conditions (Version 1.1)**

Where the context admits: "we", "us" & "our" includes Phoenix SSI Limited of Dawson House, 128-130 Carshalton Road, Sutton, Surrey TW1 4TW United Kingdom or any party acting on Phoenix's implicit instructions. "You" and "your" includes the person purchasing the services or any party acting on the customer's instructions. "The Registrant" includes the person applying for a domain name or any party acting on the Registrant's instructions. "The Registry" means the relevant domain names Registry.

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").

The relationship entered into between you and us is governed by these following terms, which shall apply during, and where necessary after, the period of the commercial relationship between you and us.

### **1. Server Hardware**

- 1.1. We will be the owner of the server.
- 1.2. 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.
- 1.3. We shall have no liability for any loss or damage to any data stored on the server.
- 1.4. You acknowledge that we cannot guarantee that the server will be free from defects. Nor can we guarantee that it will operate uninterrupted or without failure. We shall use our reasonable endeavours to make available to You at all times the Services but We 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.
- 1.5. Should we 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.
- 1.6. 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.

### **2. Network Connectivity & Bandwidth**

- 2.1. We will provide a means for you 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.
- 2.2. A Data Blocks will not be valid and will not increase your data transfer quota 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.
- 2.3. Any access to other networks through the services must comply with the rules appropriate for those other networks.



- 2.4. We 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 Phoenix, 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.
- 2.5. We make no representation and give no warranty as to the accuracy or quality of information received by any person via the services.

### **3. Software**

- 3.1. We grant you a non-transferable, non-exclusive license to use the software, in object code form only, for your internal needs, solely on the hardware provided, and in conjunction with the services.
- 3.2. You agree that you will not:
  - 3.2.1. Copy the Software.
  - 3.2.2. Reverse engineer, decompile, disassemble or otherwise attempt to derive source code from the software.
  - 3.2.3. Sell, lease, license, transfer or sublicense the software or the documentation.
  - 3.2.4. Write or develop any derivative or other software programs, based, in whole or in part, upon the software.
- 3.3. This Agreement transfers to you neither title nor any intellectual property rights to the software, documentation, or any copyrights, patents or trademarks, embodied or used in connection therewith, except for the limited license to use in Section 3.1.
- 3.4. Any third party software is supplied to you on the basis of the relevant third party's license terms with which you agree to comply.
  - 3.4.1. In the case of Microsoft software specifically, you 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.
- 3.5. We will use our reasonable endeavours to check the software for the most commonly known viruses prior to delivery to you. However, you are solely responsible for virus scanning the software and we give no warranty that the software will be free from viruses.
- 3.6. You acknowledge that software in general is not error-free, and agree that the existence of such errors will not constitute a breach of this Agreement.

### **4. Support & Management Services**

- 4.1. We will install the software detailed in the product specification onto the hardware in our standard configuration free of additional charge.
- 4.2. We 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 a security vulnerability in software installed as standard which we deem a threat considering the intended



use of the services for Web Site hosting, however we 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.

- 4.3. We are not obliged to install onto the server any additional software for you or modify the configuration of existing software from its default. You acknowledge that should we agree to do so, a charge may be made to cover employee time.
- 4.4. We 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.
- 4.5. We do not provide technical support for your customers.
- 4.6. Our obligation to provide support and management services will not extend to:
  - 4.6.1. Software or systems not installed as standard by us.
  - 4.6.2. Software or systems configured or modified by you other than through the provided web based control panel.
  - 4.6.3. Correction of faults arising from your failure to comply with instructions or recommendations provided by us directly or through documentation and manuals.
  - 4.6.4. Rectification of lost or corrupted data.
- 4.7. We 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 you. We will endeavour to give you reasonable notice of any such modification, where this is reasonably practicable.

## **5. Data Backup**

- 5.1. Unless you purchase a data backup product as an additional cost option, we will make no backups of the data stored on the server.
- 5.2. In the event that You purchase a data backup product we 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 we do not warrant that any data will be backed up correctly, nor that any successful restoration of data will be possible.
- 5.3. 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.
- 5.4. We recommend that you make a backup of all data on the server regardless of whether you have purchased a data backup product.

## **6. Domain Name Registration**

- 6.1. We make no representation that the domain name you wish to register is capable of being registered by or for you or that it will be registered in your name. 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.

- 6.2. The registration and use of your 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 that you comply with them.
  - 6.2.1. By registering a .uk domain name, you enter into a contract of registration with Nominet UK on the terms and conditions published at <http://www.nominet.org.uk>.
- 6.3. You shall have no right to bring any claim against us in respect of any refusal to register a domain name by the relevant registration authority.
- 6.4. Any administration charge paid by you to us shall be non-refundable notwithstanding refusal by the Registry to register your desired name.
- 6.5. We shall have no liability in respect of the use by you of any domain name; any dispute between you 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 giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant Registry but will not be obliged to take part in any such dispute.
- 6.6. We shall not release any domain to another provider unless full payment for that domain has been received by us.

## **7. Use Of The Services**

- 7.1. You shall keep secure any identification, password and other confidential information relating to your account or the services and shall notify us immediately of any known or suspected unauthorised use of the services or breach of security, including but not limited to loss, theft or unauthorised disclosure of your password or other security information.
- 7.2. You shall observe the procedures which we may from time to time prescribe and shall make no use of the services which is detrimental to our other customers.
- 7.3. In the case of an individual user, you warrant that you are at least 18 years of age and if the user is a company, you warrant that the services will not be used by anyone under the age of 18 years.
- 7.4. You are solely responsible for the content of any postings, data or transmissions using the services or any other use of the services by you or by any person or entity.
- 7.5. You represent, undertake and warrant to us that neither you or any person or entity will use the services for illegal, disruptive or objectionable purposes. In particular, you represent, warrant and undertake to us that:
  - 7.5.1. You will not use the services in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.
  - 7.5.2. You will not upload, post, link to or transmit:
    - 7.5.2.1. any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, blasphemous, profane or otherwise objectionable in any way.



- 7.5.2.2. any material containing a virus or other hostile computer program.
- 7.5.2.3. any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
- 7.5.3. All email sent using the services, or which refers to content hosted on the services will be in accordance with applicable legislation (including data protection and electronic communications legislation).
- 7.5.4. You will not use the services in any manner which interferes with, or disrupts, other network users, services or equipment including, without limitation, unsolicited advertising or chain letters, inappropriate news group or forum posts, wrongly impersonating another user and falsifying one's network identity.
- 7.5.5. You will not use the services to make or attempt to make unauthorised entry to any other machine accessible location, via the network.
- 7.5.6. You will not use the services to host an Internet Relay Chat (IRC) server or bot that is part of or connected to another IRC network or server.
- 7.6. If we have reasonable grounds to believe that you are or have been utilising the services for any such illegal, disruptive or objectionable purpose, we may immediately, without prior notice to you:
  - 7.6.1. Suspend the services.
  - 7.6.2. Terminate this Agreement.
  - 7.6.3. Amend, remove from the Server or prevent access to the offending material or content.
- 7.7. You shall defend, indemnify and hold harmless us from and against all liabilities and costs (including reasonable solicitor's fees and litigation expenses) from any and all claims by any entity arising out of your use of the services, including those without consent.

## **8. Service Level Agreement**

- 8.1. The Service Level Agreement, hereinafter referred to as the SLA sets out our aims with regard to the level of service provided.
- 8.2. Our failure to provide meet an aim set out in the SLA will not constitute a breach of this contract.
- 8.3. 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:
  - 8.3.1. A problem in your access provider's network or that of their upstream providers which prevents You from accessing the Phoenix network.



- 8.3.2. A problem with your Server's hardware or software which renders it or an application or service on it inoperable.
- 8.3.3. The period during which network protocols such as STP, OSPF and BGP are re-converging after an equipment or link failure.
- 8.4. In the event that you wish to make a claim for a service credit in accordance with the SLA, you will notify us including full details of and the time at which the incident occurred within 7 days of the incident to which the claim relates occurring.
- 8.5. We reserve the right to determine whether any service credit is due.
- 8.6. Should we 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 your Server will not be waived. Service credits will not be provided in the form of cash or equivalent.

## **9. Resellers**

- 9.1 Where you resell the whole or part of the services, you will continue to be bound by these terms and conditions. You will be responsible for ensuring that your customers are bound by terms and conditions that adequately reflect and give effect to these.
- 9.1 You shall not incur or purport to incur on our behalf any liability nor in any way pledge or purport to pledge our credit or to make any contract binding on us.
- 9.1.3. No default by your customers shall in any way affect, modify or limit your obligations under this Agreement.

## **10. Payment**

- 10.1. All charges payable by you for the services shall be in accordance with the scale of charges and rates published from time to time by us on our web site, errors and omissions excepted and shall be due and payable in advance of provision of the services.
- 10.2. We reserve the right to change pricing at any time although all pricing is guaranteed for the period of pre payment.
- 10.3. Payment is due each anniversary month, quarter or year following the date the services were established until closure notice is given in accordance with 12.5. If You choose to pay by credit or debit card you authorise Phoenix to debit Your account renewal fees from Your card.
- 10.4. All payments must be in UK Pounds Sterling.
- 10.5. If Your cheque is returned by the bank as unpaid for any reason, you will be liable for a "returned cheque" charge of £25.
- 10.6. 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 but not obliged forthwith to suspend the provision of Services to you.



## 11. Termination And Refunds

- 11.1 We shall be entitled to suspend the services and/or terminate this Agreement forthwith without notice to you if you:
- 11.1.1. fail to pay any sums due to us as they fall due.
  - 11.1.2. break any of these terms and conditions.
  - 11.1.3. are a company and you go into liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with your creditors.
- 11.2. No refunds will be made under any circumstances for services suspended in accordance with 12.1.
- 11.3. Without prejudice to our other rights and remedies, we may at our sole discretion suspend the provision of the whole or any part of the services (temporarily or permanently) and will have no liability to provide the services on the occurrence of any of the following events:
- 11.3.1. Notified or unscheduled upgrade or maintenance of our IT systems.
  - 11.3.2. Issue by any competent authority of an order which is binding on us which affects the services.
  - 11.3.3. We deem at our sole discretion that the network or system resources used by You in relation to the Services warrants suspension to protect the services provided by Us to all or any of Our other customers.
- 11.4. We reserve the right to suspend the services and/or terminate this Agreement at any time. In the event of this you will be entitled to a pro rata refund based upon the remaining period of pre-payment.
- 11.5. You may cancel the Services at any time. To do so you must request cancellation of the services in writing including your server number and your account username and password. We will cancel the services within 2 working days of receipt of your request.
- 11.6. During the first 7 days of services, you are entitled to a refund of the basic Server 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 should you decide to cancel the services.
- 11.6.1. Domain name registration fees, charges for additional data transfer and charges for optional extras added to Your account are not refundable under any circumstances.
  - 11.6.2. You will not be entitled to a refund on this basis if you have previously held an account with Phoenix.
- 11.7. Where payment has been made by credit or debit card, any refund will only be issued to the same credit or debit card.
- 11.8. On termination of this Agreement or suspension of the services we shall be entitled immediately to stop access to your Server and to remove all data located on the Server.



## **12. Indemnity**

12.1. You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the services (including use without your consent) including without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of any of the terms of this Agreement.

## **13. Limitation Of Liability**

13.1. All conditions, terms, representations and warranties relating to the services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded to the extent applicable under UK law, subject always to sub clause 14.2.

13.2. Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

13.3. Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the services shall be limited to the charges paid by you in respect of the services which are the subject of any such claim.

13.4. In any event no claim shall be brought unless you have notified us of the claim within one month of it arising.

13.5. In no event shall we be liable to you for any loss of business, contracts, profits or anticipated savings or for any other indirect or consequential or economic loss whatsoever.

## **14. Force Majeure**

14.1. We shall have no liability to you in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of force majeure which means, circumstances beyond our reasonable control including acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, unauthorised use or access to the IT systems, explosion, flood, epidemic, strikes and other industrial disputes (in each case, whether or not relating to our workforce), restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.

## **15. Notices**

15.1. Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by e-mail shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error-free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.



## 16. Non-Waiver

16.1. Any forbearance or failure by us to enforce a contractual provision to which you are subject shall not affect our right to require such performance at any subsequent time, nor shall the waiver or forbearance by us of any breach of any provisions of the agreement herein be taken to be or held to be a waiver of the provision or provisions itself of themselves.

## 17. Law

17.1. This Agreement shall be governed by and construed in accordance with English law and you hereby submit to the exclusive jurisdiction of the English courts.

## 18. Headings

18.1. Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

## 19. Entire Agreement

19.1. 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 confirm that 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.

### **SCHEDULE A: Terms and Conditions Regarding Use of Microsoft Software**

This document concerns your use of Microsoft software, which includes computer software provided to you by Phoenix as described below, and may include associated media, printed materials, and "online" or electronic documentation (individually and collectively "Software Products"). Phoenix does not own the Software Products and the use thereof is subject to certain rights and limitations of which Phoenix needs to inform you. Your right to use the Software Products is subject to your agreement with Phoenix, and to your understanding of, compliance with and consent to the following terms and conditions, which Phoenix does not have authority to vary, alter or amend.

"Client Software" means software that allows a device to access or utilize the services or functionality provided by the Server software. "Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," or other electron device. "Server Software" means software that provides services or functionality on a computer acting as a server. "Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

A.1. **Ownership of Software Products.** The Software Products are licensed to Phoenix from an affiliate of the Microsoft Corporation ("Microsoft"). All title and intellectual property rights in and to the Software Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the



Software Products) are owned by Microsoft or its suppliers. The Software Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Software Products does not transfer any ownership of the Software Products or any intellectual property rights to you.

- A.2. **Use of Client Software.** You may use the Client Software installed on your devices by Phoenix only in accordance with the instructions, and only in connection with the services, provided to you by Phoenix.
- A.3. **Use Of Redistribution Software.** In connection with the services provided to you by Phoenix, you may have access to certain "sample," "re-distributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO PHOENIX, WHICH TERMS MUST BE PROVIDED TO YOU BY PHOENIX. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Phoenix.
- A.4. **Copies.** You may not make any copies of the Software Products; provided, however, that you may (a) make one (1) copy of Client Software on your device as expressly authorized Phoenix; and (b) you may make copies of certain Redistribution Software in accordance with paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Phoenix, upon notice from Phoenix or upon transfer of your device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the Software Products.
- A.5. **Limitations on Reverse Engineering, De-compilation and Disassembly.** You may not reverse engineer, decompile, or disassemble the Software Products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.
- A.6. **No Rental.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Software Products to any third party, and you may not permit any third party to have access to and/or use the functionality of the Software Products.
- A.7. **Termination.** Without prejudice to any other rights, Phoenix may terminate your rights to use the Software Products if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the Software Products, and destroy all copies of the Software Products and all of its component parts.
- A.8. **No Warranties, Liabilities Or Remedies By Microsoft.** Any warranties, liability for damages and remedies, if any, are provided solely by Phoenix and not by Microsoft or its affiliates or subsidiaries.
- A.9. **Product Support.** Any product support for the Software Products is provided to you by Phoenix and is not provided by Microsoft or its affiliates or subsidiaries.
- A.10. **Not Fault Tolerant.** The Software Products may contain technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the software products could lead to death, personal injury, or severe physical, property or environmental damage.
- A.11. **Export Restrictions.** The Software Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Software Products, including the U.S. Export Administration Regulations, as well as end-



user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

- A.12. **Liability For Breach.** In addition to any liability you may have to Phoenix, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

## **SCHEDULE B: Microsoft Licenses Provided With Phoenix Products**

This document details the type of Microsoft license together with key usage rights and restrictions of such license as is provided with our range of dedicated server products. These rights and restrictions are not exhaustive and it is your responsibility to ensure that your use of the services complies with the Microsoft license provided. Should you wish to use the services in a manner which does not comply with the Microsoft license provided as standard you must make arrangements with us to obtain the appropriate license type.

### **B.1. Windows Server 2003 Web Edition**

**Windows Server 2003 Web Edition Processor License.** The Server Software may be used solely for deployment of web pages, web sites, web applications, web services, and POP3 mail serving. You may install web Server Software (for example, Microsoft Internet Information Services), non-enterprise database engine software licensed to support not more than twenty-five (25) concurrent users (for example, Microsoft SQL Server Desktop Engine), or web availability management software (for example, Microsoft Application Center). These applications may access data from any one or more of the following applications deployed on a separate Server: (i) database software (such as Microsoft SQL Server), and or (ii) business application software (for example, enterprise e-mail, enterprise resource planning, and customer relationship management). Any other usage of the Server Software is not permitted.

### **B.2. Windows Server 2003 Standard Edition**

**Windows Server 2003 Anonymous Processor License.** You may allow only the following users to use or access the Server Software: (i) Users who access the Server Software solely through the Internet and are not authenticated or otherwise individually distinguished by the Server Software or a Multiplexing Service (for example, by browsing a public website anonymously). (ii) Users who access and use the Server Software solely as a platform for server applications (excluding applications that have direct or indirect interaction with Windows authentication services (when user or application credentials are exchanged between the Server Software and a user or device), for example without limitation Microsoft Exchange Server and Microsoft SharePoint Portal Server). A "Multiplexing Service" is a software application or service accessing or using the Server Software at the request of or on behalf of a user. No other users may use or access the Server Software with the limited exception that you may permit up to five (5) other users to use or access the services of a Server running the Server Software.

### **B.3. SQL Server 2000 Standard Edition**

**SQL Server 2000 Standard Edition Processor License.**  
Version 1.1