# Terms of Service

Upon signing up for/and or using the Services of PacHosting, all subscribers agree to comply with PacHosting's Terms of Service (the "TOS") set out herein below, the Acceptable Use Policy (the "AUP"), the Service Level Agreement (the "SLA") of the Services and all supplementary terms (hereinafter collectively referred as "Agreement") posted from time to time on PacHosting's web site https://www.pachosting.hk/en/about-us/legal.php. Unless otherwise stated, defined terms used herein shall have the same meanings throughout the Agreement.

**1.      Definitions**

In these TOS, the following words have the following meanings unless the context otherwise requires:

**Acceptable Use Policy** means policy statements and/or set of rules applied by PacHosting that describe the ways in which the network site or system may be used and as to what behaviour is acceptable from Users of the local network/Internet connected via the local network;

**Account** means customer data record of the Subscriber in our system. Each subscriber's account will be assigned an Account ID.

**Account ID / Client ID** means a numeric identifier for a subscriber's account.

**Accounts Receivable Documents (AR documents)** means documents that record all financial activities of the subscriber account.

**Agreement** means collectively the TOS, the AUP, the SLA of the Services and all supplementary terms posted on PacHosting's web site: https://www.pachosting.hk/en/about-us/legal.php;

**PacHosting** means Vodien Internet Solutions Pte Ltd;

**Charges** means the charges payable by the Subscriber pursuant to the terms of the Agreement, including, but not limited to, all installation charges, monthly service fees, deposits and other charges for which the Subscriber is liable;

**Commencement Date** means the date on which the Services first become available for use by the Subscriber;

**Customer Control Panel (CCP)** means the platform for customer to manage their service and customer account billing.

**Customer Control Panel User (CCP user)** means the access credentials to the CCP which includes a login and a password.

**Equipment** means any telecommunications and related equipment, including but not limited to, any server, router or switch, whether owned by or leased to PacHosting, provided by PacHosting to the Subscriber in connection with the provision of the Services;

**Intellectual Property Rights** means patents, trademarks, design rights, applications for any of the foregoing, copyright topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, in each case whether registrable or not in any country;

**Service Level Agreement (SLA)** means any agreement or statement specified by PacHosting as such, describing the level of service offered by PacHosting, recording the understanding about services, priorities, responsibilities, guarantees and warranties, specifying the levels of availability, serviceability, performance, operation, or other attributes of the Services, and includes PacHosting's standard Service Level Agreement, Service Level Agreement for BizShare Hosting, Service Level Agreement for Cloud Servers, Service Level Agreement for Virtual Dedicated Server, Service Level Agreement for Dedicated Server Hosting, and Service Level Agreement for Hosted Exchange Service;

**Services** means the provision of access to the internet and any ancillary internet-based technologies and consulting and other services via the System, whether paid or unpaid, provided, maintained, or modified by PacHosting to the Subscriber from time to time pursuant to the Agreement or as set out in the contents of PacHosting's quotation to the relevant Subscriber.

**Subscriber** means any legal entity (natural person, company or organization) which is identified on the application form or invoice whose application for the Services has been accepted by PacHosting.

**System** means PacHosting connected system of servers from time to time provided, modified, upgraded, or substituted by PacHosting used to host Web sites and emails or software in order to provide Services to Subscriber.

**Users** mean all Subscribers and other users of the Services including those who access the same without accounts with PacHosting.

## 2. Scope of Agreement

PacHosting will provide to the Subscriber, and the Subscriber will take and pay PacHosting for the provision of, the Services for the term hereof subject to and in accordance with the terms and conditions hereof.

## 3. Commencement and Term

1. These TOS shall be for an initial term (the "Initial Term") as either requested by the Subscriber as indicated on the relevant service application form(s) to be approved by PacHosting, or as otherwise agreed whether orally, by email, or in writing between PacHosting and the Subscriber.
2. Subject to Clause 10.1, upon the expiry of the Initial Term or any subsequently extended term, these TOS shall automatically be extended subject to the sole and absolute discretion of PacHosting for another term of an equal length as that of the expiring term. For the avoidance of doubt, a term shall be automatically extended subject to the sole and absolute discretion of PacHosting upon its expiry pursuant to this Clause, if the Subscriber has not terminated the Agreement by giving not less than 30 days written notice to PacHosting prior to the expiry of that term.
3. For the avoidance of doubt, if these TOS are terminated by the Subscriber during the continuation of a term before its expiry for any reason other than pursuant to Clause 10.2, the Subscriber shall be liable to pay PacHosting the full amount of all Charges for the whole of that term.
4. For the avoidance of doubt, if the Initial Term or any subsequently extended term is automatically extended for another term of an equal length as that of the expiring term pursuant to Clause 3.2 hereof, despite the Subscriber may have attempted to terminate the Agreement but by giving less than 30 days written notice to PacHosting prior to the expiry of that term, and these TOS are terminated by the Subscriber during such another term before its expiry for any reason other than pursuant to Clause 10.2, the Subscriber shall be liable to pay PacHosting the full amount of all Charges for the whole of that another term or such portion of the Charges for the whole of that another term as shall be sufficient to compensate the loss and damages suffered by PacHosting as a result of such termination as shall be determined by PacHosting.

## 4. Payment

1. In consideration for the provision of the Services, the Subscriber will pay to PacHosting the Charges notified by PacHosting to the Subscriber from time to time. The Subscriber will be solely responsible to pay any taxes and other charges arising in relation to its use of the Services.
2. PacHosting will issue invoices for the Charges to the Subscriber by post, electronic mail and/or facsimile transmission. All Charges are due and payable on presentation of the invoice therefor.

3. PacHosting may charge a late payment interest charge calculated at the rate of 1.5% per month pro rata on daily basis on any Charges not paid within 30 days after the date of the invoice therefor.

4. The Subscriber shall provide and deliver to PacHosting proof of any payment made by the Subscriber to the PacHosting under the Agreement to the reasonable satisfaction of PacHosting. Unless and until the Subscriber shall have complied with this sub-clause in respect of the relevant payment, PacHosting shall be entitled to treat such payment yet due and outstanding.

5. PacHosting shall be entitled to reimbursement and payment of all fees and expenses (including legal fees and disbursements) on a full indemnity basis PacHosting shall incur in the exercise of its rights hereunder including enforcement of payment of the Charges against the Subscriber, and without prejudice to the foregoing, shall be entitled to charge the Subscriber a late payment administration charge calculated at the rate of 35% or such other rate as PacHosting shall advise on the total amount of any Charges not paid within 30 days after the date of the invoice therefor in the event that PacHosting shall make use of the services of debt collection agencies for the collection of such Charges in which event the late payment administration charge shall become part of the debt payable by the Subscriber to PacHosting and shall likewise be recoverable by PacHosting from the Subscriber as if it is part and parcel of the Charges for the Services rendered by PacHosting.

## 5. Obligations of PacHosting

1. PacHosting will during the terms of these TOS provide the Services to the Subscriber in accordance with the terms and conditions of the Agreement. PacHosting will use reasonable endeavours to install and provide the Services within the timescales agreed (if any). However, such time scales are estimates only and PacHosting will in no event be liable for any costs, charges, losses or expenses of any kind arising out of delays in meeting installation, delivery or performance dates.

2. PacHosting will comply with the terms of its Personal Information Collection Statement ("PICS") and the provisions of the Personal Data (Privacy) Ordinance in dealing with the personal data of any of the Subscriber employees which it collects. The personal data of Subscriber will not be transmitted and disclosed to any third party (save for the purpose specified in this Agreement or any directly related purpose) unless the Subscriber has given his/her prior consent. PacHosting reserves the right to disclose the Subscriber's personally identifiable information as required by law and when PacHosting believes that disclosure is necessary to protect PacHosting rights and/or comply with a judicial proceeding, court order, or legal process. The Subscriber is entitled to make a data access or correction request concerning his/her own personal data (subject to prior confirmation of identity) kept with PacHosting. Alternatively, the Subscriber may request that such personal data at any time be edited or amended.

## 6. Obligations of the Subscriber

1. The Subscriber shall provide PacHosting for examination and verification proof of identity and constitution (whichever is applicable) and particulars of registered office or residential address (whichever is applicable) of the Subscriber as PacHosting shall request including but not limited to (whenever applicable) invoice(s) for utilities, identification card(s), and driver's licence(s), valid and current business registration certificate, latest annual return, certificate of incorporation, certificate of good standing (issued within one month), certificate of incumbency (issued within one month), memorandum and articles of association, and any other documents of identity and/or constitution of the Subscriber, and (where the Subscriber is not a natural person) of its authorized contact person for purpose of administration in respect of the Services, as PacHosting shall reasonably request, and shall deliver to PacHosting true and complete copies thereof upon request.

2. The Subscriber will allow PacHosting's personnel full and complete access to the premises of the Subscriber for the purposes of installing and providing the Services or any of them. The Subscriber shall at its own cost prepare the installation site and make all other necessary preparations in accordance with PacHosting's specifications.

3. The Subscriber will provide PacHosting with all necessary co-operation, information, equipment, data and support which PacHosting may reasonably require for the provision of the Services at such times as PacHosting requests.

4. The Subscriber warrants and undertakes that it will not make use of the Services in any manner which may infringe any Intellectual Property Rights or any applicable laws or regulations or which is otherwise in the sole and absolute opinion of PacHosting immoral, improper, inappropriate, or objectionable, or to copy, reproduce, distribute, publish, transmit, or otherwise deal with any unsolicited advertising or promotional material or any material which is obscene, indecent, seditious, offensive, defamatory, discriminatory, immoral, improper, inappropriate, or objectionable, or the publication or distribution of which is in breach of the confidence of PacHosting or any third party, or as a forum for viewing, posting up of messages or information, and discussion by the public or any section thereof (whether membership or registration is required or not and whether anonymous or otherwise) or forum of a similar nature, or allow the Services to be hacked or the computer hardware and software in connection with the Services to be modified or broke-in for any purpose outside of its original intended use or be reckless or ignorant as regards thereto.

5. The Subscriber's right to use the Services is personal to the Subscriber. The Subscriber shall not licence or permit or purport to licence or permit any third party to use the Services, whether or not for financial or other consideration. If the Subscriber designates more than one permitted user of the Services within its organisation, the Subscriber shall bring the provisions of the Agreement to the attention of each permitted user and shall procure that each permitted user complies with the provisions of the Agreement. The Subscriber will be responsible for use of the Services by its permitted users and the indemnity given in Clause 13.1 shall extend to all such use of the Services.

6. The Subscriber will at all times when using the Services comply with all applicable laws.

7. The Subscriber will at its own expense maintain and keep all Equipment in good working order during the terms of the Agreement.
Subscriber is solely responsible for the activity that occurs on their Account, whether authorized by the subscriber or not. The Subscriber must keep your Account information secure, including without limitation your Account ID, CCP user login and password, servers IP, logins and passwords, control panels logins and passwords and mailboxes logins and passwords.

8. Subscriber which is a business entity or an organization should appoint up to three (3) persons (the "Administrative Contact", the "Billing Contact" and the "Technical Contact"), whereas Subscriber who is an individual, the individual oneself would serve as the "Personal Contact" only, same as "Administrative Contact",), whom the Subscriber will designate as the Subscriber's agents with the authority to perform certain administrative functions on the Services, including but not limited to:

   1. Administrative Contact for receiving service passwords, AR documents, account notifications. This contact can be used for supporting issue communications, with the authority to change of any contact information.
   2. Billing Contact for receiving AR documents and account notifications.
   3. Technical Contact for supporting issue communications.

9. Each Subscriber Account is associated with at least one (1) CCP user which allows access to the CCP. CCP user has its own contact information.

10. It will be solely the Subscriber's responsibility to keep the Contact information of 6.8 and the CCP User contact information up to date. The Subscriber need to update the contact information by using Customer Control Panel (CCP) including 'User' within an account profile.

## 7. Suspension of Services

1. PacHosting may at its sole and absolute discretion, without terminating the Agreement and without liability, refuse to provide at all or immediately suspend part or all of the Services until further notice if:
   1. The Subscriber fails to comply with or observe Clause 6.1 or 6.4 hereof; or

   2. PacHosting would be permitted to terminate the Agreement under Clause 10.3 or 10.4. In such case, the Agreement will be terminated and the Subscriber will still be responsible for the costs, fees and/or other liabilities as stated in the Agreement; or

   3. PacHosting is obliged to comply with an order, instruction or request of government, regulatory body or other competent authority;

4. PacHosting considers it necessary or desirable to maintain or upgrade or modify the System for whatever reason. PacHosting will give the Subscriber the maximum period of notice practicable in the circumstances if it needs to suspend such Services for this reason; or

5. PacHosting needs to repair a fault in the System as a result of any unplanned outage, downtime or other reasons beyond PacHosting's control. The Subscriber acknowledges that PacHosting may not be able to give the Subscriber any notice regarding suspension of the Services.

2. If PacHosting refuses to or does not provide or suspends such Services due to any event in Clauses 7.1.1 and 7.1.2:

1. this will not exclude PacHosting's right to terminate the Agreement later in respect of the same or any other event; and

2. the Subscriber will, in addition to paying any overdue Charges, be liable to pay PacHosting a fee as may be notified by PacHosting from time to time to restore such Services; and

3. the Subscriber acknowledges that restoration of the Services may take up to 30 days after receipt by PacHosting of payment of the Services restoration fee and any overdue Charges.

3. If PacHosting refuses to or does not provide or suspends such Services due to any event in Clause 7.1:

1. PacHosting shall not be responsible for or liable to the Subscriber whatsoever and howsoever in respect of any emails, data, or information lost, not stored, or not transmitted attributable or related to the said event, and the Subscriber irrevocably and unconditionally waives and forgoes all claims it might have against PacHosting in respect thereof.

## 8.   Intellectual Property

The Subscriber warrants that it holds all necessary or desirable rights, licences and other permissions in respect of the contents which it uploads to the Internet.

User expressly grants to PacHosting a non-exclusive, royalty free license, for the duration of the Agreement, to cache the entirety of the contents of or supplied by the Users' and contents on the Users' Web site, including contents supplied by third parties, hosted by PacHosting under the Agreement and agrees that such caching is not an infringement of any of Users' intellectual property rights or any third party's intellectual property rights.

The Subscriber hereby grants to PacHosting a non-exclusive, royalty free licence for the duration of the Agreement to reproduce, publish, copy, transmit and otherwise use such contents for the purpose of providing the Services.

### 9. Payment Non-Refundable

Any payment or any part or parts thereof already made for a term or part or parts thereof will not be refundable (unless otherwise agreed by PacHosting) in the event of refusal of provision or suspension under Clause 7 hereof or termination under Clause 10.3 or 10.4 hereof or otherwise, and the Subscriber shall be deemed to have waived all rights to such payment already made or any part or parts thereof paid for the term or the unexpired portion of the term (where applicable).

### 10. Non-Extension or Termination or Nullity

1. A term shall not be automatically extended (which is subject to the sole and absolute discretion of PacHosting) upon its expiry pursuant to Clause 3.2 hereof, if the Subscriber terminates the Agreement by giving not less than 30 days written notice to PacHosting prior to the expiry of that term.

2. PacHosting may terminate the Agreement at any time by giving not less than 7 days written notice to the Subscriber.

3. PacHosting may at any time terminate the Agreement forthwith on or without notice to the Subscriber if the Subscriber is in breach of Clause 6.1 or 6.4 and/or any terms and conditions of the AUP.

4. Without prejudice to any other rights or remedies (whether under the Agreement or at law):

    1. Either party may terminate the Agreement immediately by serving written notice on the other if:
        1.1. The other party commits a breach of any material obligation under the Agreement and, in   the case of a remediable breach (except failure to pay any Charges), fails to remedy the breach after receiving 14 days written notice to do so; or
        2.1. The other party becomes insolvent; or
    2. PacHosting may terminate the Agreement immediately with or without serving written notice on the Subscriber if the Subscriber fails to pay any Charges under the Agreement.

5. In this Clause, "insolvent" means the appointment of, or the application to a court for the appointment of, a liquidator, provisional liquidator, receiver or manager to that party, the entering into a scheme of arrangement or composition with or for the benefit of that party's creditors generally, any reorganisation, moratorium or other administration involving the creditors or any class of the creditors of that party, a resolution or proposed resolution to wind up that party, or that party becoming unable to pay its debts, or being deemed to have become unable to pay its debts, as and when they fall due within the meaning of Section 178 of the Companies Ordinance.

6. PacHosting shall not be responsible for or liable to the Subscriber whatsoever and howsoever in respect of any emails, data, or information deleted, removed, lost, not stored, or not transmitted as

a result of the termination, and the Subscriber irrevocably and unconditionally authorizes and instructs PacHosting to delete and remove the same from any records or storage in respect of the Services And waives and forgoes all claims it might have against PacHosting in respect thereof.

7. The Subscriber warrants and represents to PacHosting that it is not an offshore company. If the Subscriber is found to be an offshore company, the Agreement or documents signed or entered into in relation to the Services shall be null and void and shall be of no effect whatsoever and shall be rescinded whether payment has been made by the Subscriber or accepted by PacHosting and whether the Services has been commenced or provided. In any event, PacHosting has the absolute discretion and authority to waive and remove the requirements and restrictions of this sub-clause.

## 11. Consequences of Termination

1. Termination of the Agreement will not relieve either party of any liability for breach of the Agreement or as may otherwise be established.

2. The provisions of Clauses 3.2, 11, 13 and 14 of these TOS will continue in force despite the termination of the Agreement.

3. Within not more than 30 days after termination of the Agreement for any reason, the Subscriber will give PacHosting full and free access to its premises to repossess any Equipment and software provided by PacHosting. The Subscriber will return Equipment to PacHosting in the same condition in which it was provided to the Subscriber (fair wear and tear excepted).

## 12. Limitation of Liability

1. Nothing in the Agreement will exclude or restrict either party's liability for death or personal injury resulting from its negligence or that of its employees while acting in the course of their employment.

2. Subject to Clause 12.1, PacHosting's liability in contract, tort or otherwise (including negligence) in connection with the Services, any software provided hereunder or any order, whether caused by failure to deliver, non-performance, defects, breach of warranty or otherwise, in respect of any one or more incidents, will not exceed the total Charges received by PacHosting from the Subscriber in the month in which the incident occurs.

3. Subject to the express terms of the Agreement PacHosting will not be liable to the Subscriber for any indirect or consequential loss, whether arising from negligence, breach of contract or otherwise, including without limitation for any loss of revenue, profits, business, contracts or data, or for any anticipated savings, business interruption or downtime.

4. The Users understand, acknowledge and agree that if PacHosting takes any corrective action under the Agreement because of an action of User or the agents of User, that corrective action may

adversely affect other Users of User or other agents of the Users, and Users agree that PacHosting shall have no liability to Users due to such corrective action.

5. PacHosting shall not be liable to the Subscribers or Users for any loss and damages which he/they may sustain attributable or related to any event in Clause 7.1. By using or continuing to use or accept the Services, the Subscribers and Users irrevocably and unconditionally agree to waive and forgo any claim that he/they may have which are attributable or related to any event in Clause 7.1 against PacHosting.

## 13. Indemnities

1. The Subscriber agrees to indemnify and hold harmless PacHosting for all actions, claims, costs, losses, damages and expenses arising out of the Subscriber's use of the Services.
2. The Subscriber agrees to indemnify and hold harmless PacHosting for all claims, proceedings and costs (including legal costs) brought by any third party in relation to the Subscriber 's use of the Services.

## 14. Warranties

No warranties are given by PacHosting in relation to the Services or the use thereof by the Subscriber and PacHosting gives no guarantee of end to end bandwidth capacity or availability on the Internet. To the extent permitted by law, PacHosting excludes all implied warranties including, without limitation, as to quality and fitness for purpose of the Services. This paragraph is subject to the guarantees given under applicable SLA(s).

## 15. Assignment

The Subscriber will not assign its rights under the Agreement, in whole or in part, without the prior written consent of PacHosting. PacHosting may assign its rights under the Agreement at any time.

## 16. Notices

1. Any notice, invoice or other document which may be given by either party under the Agreement will be   deemed to have been duly given if left at or sent by prepaid post, facsimile transmission or electronic mail to the other party's registered office or any other address (including an electronic mail address) notified in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent.
2. Any such communication will be deemed to have been received by the other party on the day of delivery (if left), three (3) days after the date of posting (if sent by prepaid post), one (1) day after the

date of transmission (if sent by facsimile) and on the date on which the message is received in the recipient's electronic mailbox (if sent by electronic mail).

## 17. Waiver

Failure or delay by PacHosting to enforce any of its rights under the Agreement or the giving of additional time for performance or other indulgence is not a waiver of such right unless PacHosting acknowledges the waiver in writing, nor will any single or partial exercise of any right or remedy preclude any further exercise of the same or the exercise of any other right. No waiver of any particular breach of the provisions of the Agreement will operate as a waiver of any repetition of such breach.

## 18. Severability

If any provision of the Agreement which is not of a fundamental nature is found to be unenforceable or illegal, it shall be severed from the Agreement and will not affect the enforceability of the remainder of the Agreement. In this event the parties will use reasonable endeavours to agree any lawful and reasonable changes to the Agreement which may be necessary to effect as closely as possible the commercial intent of the Agreement.

## 19. Amendments

PacHosting may update, amend, modify or supplement the terms and conditions of this Agreement from time to time without notice which shall become binding to the Subscribers and Users upon their accepting or using or continuing to use the Services. The most current version of the Agreement can be found at PacHosting Website https://www.pachosting.hk

## 20. Entire Agreement

The Agreement represents the entire understanding between the parties in relation to its subject matter and supersedes all prior agreements between the parties whether oral or written.

## 21. Governing Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region (Hong Kong). The parties submit any difference or disputes arising in connection with the Agreement to the non-exclusive jurisdiction of the courts of Hong Kong.