

1. Definitions

In this Agreement, the following words have the following meanings unless the context otherwise requires:

Agreement means these Terms and Conditions together with the application form for the Services, Quotation content and any amendments;

Charges means the charges payable by the Subscriber pursuant to the terms of this Agreement, including, without limitation, 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;

Equipment means any telecommunications and related equipment, including without limitation any router or modem, 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 copyright and all other legal and beneficial intellectual and industrial property rights (including, without limitation, patent and trade secret rights) throughout the world and all know-how;

Services means the provision of access to the Internet and any ancillary Internet network-based technologies by means of dedicated leased telecommunications lines and consulting and other services provided by Pachosting to the Subscriber from time to time pursuant to this Agreement; Services such as co-location, facility management, connectivity provision and hardware supply set out in Quotation content.

Subscriber means the company or organization identified on the application form whose application to be provided with the Services has been accepted by Pachosting;

Pachosting means Pacificnet Hosting Limited; and

System means Pachosting connected system of servers used to host Web sites together with all proprietary software and other coding developed by Pachosting in order to provide services to subscribers.

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 terms of this Agreement subject to and in accordance with the terms and conditions of this Agreement.

3. Commencement and Term

1. Subject to Clause 10.2, this Agreement shall be for an initial minimum term of twelve (12) months from the Commencement Date (the Initial Term). After the Initial Term, this Agreement shall continue until terminated pursuant to Clause 10.
2. For the avoidance of doubt, if this Agreement is terminated before the expiry of the Initial Term 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 the Initial Term.

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 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.

5. Obligations of Pachosting

1. Pachosting will during the terms of this Agreement provide the Services to the Subscriber in accordance with the terms and conditions of this 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.

6. Obligations of the Subscriber

1. 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 specifications.



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2. 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.
3. The Subscriber warrants and undertakes that it will not use the Services to infringe any Intellectual Property Rights or to copy, reproduce, distribute, publish or otherwise transmit any unsolicited advertising or promotional material or any material which is obscene, indecent, seditious, offensive, defamatory or discriminatory or the publication or distribution of which is in breach of the confidence of Pachosting or any third party.
4. 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 this Agreement to the attention of each permitted user and shall procure that each permitted user complies with the provisions of this 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.
5. The Subscriber will at all times when using the Services comply with all applicable laws.
6. The Subscriber will at its own expense maintain and keep all Equipment in good working order during the terms of this Agreement.

7. Suspension of Services

1. Pachosting may, without terminating this Agreement and without liability, immediately suspend part or all of the Services until further notice if:
 1. Pachosting would be permitted to terminate this Agreement under Clause 10.3 or 10.4.1; or
 2. Pachosting is obliged to comply with an order, instruction or request of government, regulatory body or other competent authority;
 3. Pachosting needs to maintain or upgrade the System. 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
 4. Pachosting needs to repair a fault in the System as a result of any unplanned outage, downtime or other reason beyond Pachosting's control. The Subscriber acknowledges that Pachosting may not be able to give the Subscriber any notice of its need to suspend such Services for this reason.
2. If Pachosting suspends such Services due to any event in Clause 7.1.1:
 1. this will not exclude Pachosting's right to terminate this 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.

8. Intellectual Property

The Subscriber warrants that it holds all necessary or desirable rights, licences and other permissions in respect of content which it uploads to the Internet. The Subscriber hereby grants to Pachosting a non-exclusive, royalty free licence for the duration of this Agreement to reproduce, publish, copy, transmit and otherwise use such content for the purpose of providing the Services.

9. Service Cancellation

For the avoidance of doubt, if the Subscriber cancel the Service before Commencement Date (the 'Initial Term') for any reason, the Subscriber shall be liable to pay Pachosting the penalty charges equals to one month subscription fee and any extra costs incurred by Pachosting for such Service Cancellation.

10. Termination

1. The Subscriber may at any time after the expiry of the Initial Term terminate this Agreement without cause by giving not less than 21 days written notice to Pachosting.
2. Pachosting may terminate this Agreement at any time by giving not less than 7 days written notice to the Subscriber.
3. Pachosting may at any time terminate this Agreement forthwith on notice to the Subscriber if the Subscriber is in breach of Clause 6.3.
4. Without prejudice to any other rights or remedies it may have (whether under this Agreement or at law), either party may terminate this Agreement immediately by serving written notice on the other if:
 1. The other party commits a breach of any material obligation under this Agreement and, in the case of a remediable breach, fails to remedy the breach after receiving 14 days written notice to do so. For these purposes, a failure by the Subscriber to pay any Charges within 30 days after they are due will constitute a material breach; or
 2. The other party becomes Insolvent.
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.

11. Consequences of Termination

1. Termination of this Agreement will not relieve either party of any liability for breach of this Agreement or as may otherwise be established.
2. The provisions of Clauses 3.2, 11, 13 and 14 of this Agreement will continue in force despite the termination of this Agreement.
3. Within not more than 30 days after termination of this 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 this 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) however arising out of or in connection with this Agreement will in respect of any one or more incidents 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 this 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.

13. Indemnities

1. The Subscriber will indemnify and keep indemnified Pachosting from and against any and all actions, claims, costs, losses, damages and expenses arising out of the Subscriber's use of the Services.
2. The Subscriber will indemnify and keep indemnified Pachosting against all claims, proceedings and costs (including legal costs) arising from infringement or alleged infringement of any third party Intellectual Property Rights by reason of Pachosting's provision 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.

15. Assignment

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

16. Notices

1. Any notice, invoice or other document which may be given by either party under this 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 this 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 this Agreement will operate as a waiver of any repetition of such breach.

18. Severability

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

19. Amendments



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Pachosting may at any time amend or vary the terms of this Agreement, the Services provided under it and any Charges therefor by giving the Subscriber not less than [30] days prior written notice of such amendments or variations. For the purposes of this Clause, publication of such amendments or variations on Pachosting's Web site shall constitute written notice.

20. Entire Agreement

This 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

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