

## **Exabytes - Colocation Terms & Conditions**

### **1. Objectives**

This Colocation Terms and Conditions ("**CTC**") shall serve as the governing instrument to govern the colocation services ("**Services**") subscribed by the customer ("**You**", "**Your**") from Exabytes ("**Us**", "**We**", "the **Company**"), and shall be treated as part of the agreement of the Services. This CTC along with the sales order signed by You ("**Sales Order**"), and together with the terms and conditions of Exabytes.com shall bind You and Us along with the Services, and shall be constituted as the agreement ("**Agreement**") between You and Exabytes.

### **2. Services**

The colocation services are the services as set forth in Your service order ("Services") with Us, which may include rack space, power point, IP address and, bandwidth.

### **3. Terms & Renewal**

The term of the Services and the agreement shall be subject to the term as indicated in the Sales Order signed by You upon the subscription of the Services with Exabytes, unless otherwise terminated by either Party in accordance with this CTC. Any renewal of the Services can be done by You by providing a two (2) month notice to Exabytes prior to the end of the Services term. You understand that the renewal may subject to revision of the fees.

### **4. Fees and Payment**

You understand that a monthly recurring fee ("**Fees**") will be charged in accordance with the amount as described in the Sales Order, and that You will be issued with an invoice for all the amount due to Exabytes. You are required to pay the amount due to Exabytes within 30 days from the date of the invoice issued. You shall be responsible for paying the applicable tax, duties, and such other governmental charges which may be imposed.

You understand that Exabytes reserves the right to:

- a) claim from You such other fees, expenses, or damages arise or incurred by Us additionally due to Your subsequent actions or requirements after the issuance of the Sales Order;
- b) suspend or terminate the Services if You fail to pay the Fees in a timely manner;
- c) impose a late payment interest of 1.5% per month in the event of your late payment of the amount due;
- d) revise the Fees as Exabytes deems needed subject to a 30 days written notice to You.

### **5. Responsibilities**

You understand and shall fulfil the following obligations during the term of the Services:

- a) To provide the information and documents as requested by Exabytes in a timely manner;
- b) To ensure that Your equipment and devices ("Equipment") shall be placed in the rackspace assigned;
- c) To ensure the Equipments are safe and comply with the industry accepted standards;
- d) To pay Exabytes the Fees and reimburse such other fees incurred in a timely manner;

In consideration of the above, Exabytes agrees to fulfil the following obligations during the term of the Services:

- a) To provide the appropriate infrastructure and environment including the rack and cage to You;
- b) shall continue to support and maintain the infrastructure and operation of the data centre.

## **6. Installation & Alteration**

You understand that You shall be solely responsible for the installation and maintenance of Your Equipment in the environment allocated. You agree that expenses may be imposed should You require any additional support and assistance for the installation or maintenance of Exabytes. You further agree that the installation or alteration of Your Equipment shall be subject to applicable laws and regulations, reasonable industry standards, Visitation Rules, and such other codes or terms and conditions as may be imposed from time to time; and You must not make any alteration to the structure and environment of the data centre.

Prior notice will be given to You if Exabytes intends to perform any scheduled maintenance, including facility and network maintenance.

## **7. Visit to Data Centre**

As one of the subscribers of the Service, we understand that You may from time to time visit our data centre for access to Your Equipment. Any requests to visit the data centre shall be subject to prior requests, the terms and conditions or house rules ("Visitation Rules") as may be imposed. You undertake to and shall ensure Your representative or employees appointed for the visit comply with the Visitation Rules. For the submission of the visitation request, please refer to Exabytes' website for more information.

## **8. Service Level**

You may refer to Exabytes' Service Level Agreement for more information on the service level committed by Exabytes.

## **9. Insurance**

You are strongly advised to subscribe and maintain the applicable insurances on the Equipment. You understand that Your Equipment is not included in the insurance coverage which may be subscribed by Exabytes, and that You shall solely be responsible for the insurance on Your Equipment.

## **10. Relocation**

At the request of Exabytes, for a better services to our customers, we may relocate the data centre or such racks. Subject to our notification to You, You shall coordinate with our relocation as needed. If You fail to respond to the request within 14 days after receiving the notice or such other date as mentioned in the notice, You are deemed to consent to the schedule of arrangement, and Exabytes reserves the right to take the necessary actions in order to complete the relocation arrangement, including to bill You for the costs and expenses incurred.

## **11. Termination**

11.1 Exabytes may terminate this Agreement immediately upon giving thirty (30) days' written notice to You:

- a) if Exabytes 's relationship with a third party partner or provider to provide the Service expires, terminates or requires Exabytes to change the way Exabytes provides the software or other technology as part of the Service;
- b) if Exabytes believes that providing the Service could create a substantial economic or technical burden or material security risk for Exabytes;
- c) in order to comply with the law or request of governmental entity;
- d) if Exabytes determines that use of the Service by You or Exabytes' provision of any of the Service to You or any end user has become impractical or unfeasible for any legal or regulatory reason; or
- e) without having to give any reason.

11.2. Exabytes reserves the right to refuse the Service to anyone. Exabytes, in its sole discretion, may immediately terminate this Agreement if:

- a) You engage in any of the activities as spelled out but not limited to in Clause 12 below; or
- b) Exabytes or You commit a material breach of its obligations under this Agreement which is incapable of remedy; or
- c) Exabytes or You commit a material breach of its obligations under this Agreement which is capable of remedy but which is not remedied within thirty (30) days after the receipt of written notice of default from the other Party; or
- d) Exabytes or You is insolvent or takes any corporate action, or other step is taken or legal proceeding is commenced for its winding up, liquidation or dissolution (other than for the purposes of solvent reconstruction on terms approved by the Party proposing to terminate this Agreement) or for the appointment of a receiver, receiver and manager, official manager, liquidation, provisional liquidator, trustee or similar officer of it or of any or all of its revenue and asset, or
- e) in the event any equipment or combination thereof, including hardware and software used by Exabytes in offering of its Service, become affected in their performance and/or functionality so as to render it impossible for Exabytes to continue to provide the Service. In such event, the sole extent of Exabytes liability shall be the refund of any advance fee paid by You for the duration of the interruption prior to termination.

11.3. If the Agreement or Service is terminated by Exabytes due to non-compliance by You of any provision in this Agreement prior to the expiry of the Service period, You shall pay Exabytes in full charges equivalent to one (1) month service fee for each Service subscribed.

11.4. You may terminate this Agreement by giving Exabytes a thirty (30) days' written notice. If the Agreement or Service is terminated by You prior to the expiry of the Service Period, You shall pay Exabytes in full charges equivalent to one (1) month service fee for each Service purchased.

11.5. On termination or expiration of this Agreement or the Service, You shall pay Exabytes :

- a) all amount invoiced to You in accordance with this Agreement and remains unpaid as at the termination date together with the interest charged on that amount; and
- b) all amount incurred by You but not invoiced to You as at the termination date.

11.6. Termination of this Agreement by either You or Exabytes for any reason whatsoever shall be without prejudice to any other right, remedy or claim Exabytes may have against You under this Agreement or at law in respect of any antecedent breach by You of any provision of this Agreement.

11.7. If Exabytes terminates Your right to access or use any portion or all of the Service:

- a) Exabytes obligations under this Agreement shall cease;
- b) You remain responsible for all fees and charges You have incurred prior to the date of termination;
- c) You remain responsible for any applicable fee and charge for any Service to which You continue to have access, as well as applicable data storage fee and charge, and fee and charge for in-process tasks completed after the date of termination;

## **12. Warranties, Indemnity**

You also warrant the domain name being registered by Exabytes on Your behalf will not be used:

- a) for any unlawful purpose such as, but not limited to, vice, gambling or other criminal purpose whatsoever or for sending to or receiving from any person or displaying any message or posting which is offensive on moral, religious, communal or political grounds, or is abusive or of an indecent, obscene or menacing character;
- b) for any purpose which is against public interest, public order or national harmony;
- c) to publish defamatory, infringing, obscene or other unlawful material;

- d) in connection with the infringement of the copyright, patent, trademark, trade secret or other propriety right of any third party or right of publicity or privacy;
- e) to interfere with, damage, disrupt or unlawfully use or gain access to any service, equipment or computer network without authorisation by the owner of the said service, equipment or computer network;
- f) to resell the Service or otherwise provide the Service to anyone unless permitted by Exabytes.
- g) in violation of any laws relating to unfair competition, anti-discrimination or false advertising; or
- h) that result in distribution of viruses, Trojan horse, worm, time bomb, bots, or other similar harmful or deleterious programming routine.

You shall Indemnify, defend and hold harmless Exabytes from any and all liability, penalty, loss, damages, cost on a solicitor-and-client basis, expense, attorneys' fee of whatever nature arising out of or in connection with (i) any claim or action made against Exabytes caused by or resulting directly or indirectly from Your use of the Service without any limitation or exception or from Your conduct; or (ii) breach of third party intellectual property rights anywhere in the world (e.g. copyright, trademark, or other proprietary rights). This indemnification and hold harmless agreement extends to all issues associated with You, including Your website content and content on Your social media, webpage or account.

### **13. Assignment or Transfer**

You shall not assign or transfer any of Your rights or obligation under this Agreement without Exabytes' prior written consent.

### **14. Disclaimer**

THE SERVICES ARE PROVIDED "AS IS". OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT, EXABYTES MAKES NO REPRESENTATIONS OR WARRANTIES TO YOU WITH RESPECT TO THE SERVICES, SYSTEM, AND ANY UPDATES, ENHANCEMENTS, DOCUMENTATION, SOFTWARE/HARDWARE OR ANY SERVICES PROVIDED, OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. FURTHER, EXABYTES CANNOT AND WILL NOT WARRANT AGAINST HUMAN AND SYSTEM ERRORS, OMISSIONS, DELAYS, INTERRUPTIONS, OR LOSSES, INCLUDING LOSS OF DATA OR INABILITY TO ACCESS DATA. YOUR SUBSCRIPTION TO AND USE OF THE SERVICES ARE ENTIRELY AT YOUR RISK. EXABYTES CANNOT AND DOES NOT WARRANT THAT THE SERVICES PERFORMED WILL BE UNINTERRUPTED OR ERROR-FREE. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAW.

### **16. Notice**

16.1 Exabytes may provide any notice to You under this Agreement by delivering in person or sent by one of the following methods: (i) registered mail, or (ii) electronic mail, to the address or email address stated in the Exabytes invoice accepted by You.

16.2. To give Exabytes notice under this Agreement, You must contact Exabytes (i) by emailing Exabytes consultant stated in Exabytes invoices, or (ii) by personal delivery, overnight courier or registered or certified mail to Exabytes address stated in Exabytes invoices.

16.3. Notice by email will be effective on the acknowledgement of the email by recipient. Notice provided by personal delivery will be effective immediately. Notice provided overnight courier



will be effective one business day after they are sent. Notice provided by registered or certified mail will be effective three (3) business days after it is sent.

## **17. Others**

17.1 This Agreement shall be governed and construed in all respects in accordance with the laws of Singapore and the Parties hereto hereby submit to the jurisdiction of the courts of Singapore.

17.2. This Agreement constitutes the entire agreement between the Parties; it supersedes any and all prior or contemporaneous oral or written agreement, negotiation, communication, understanding and term, whether express or implied.

17.3. Additional terms and conditions and policies set out in Exabytes Website are in addition to this Agreement and Exabytes reserves the right to revise those terms and conditions from time to time. In the event of any conflict or inconsistencies between the provisions of this Agreement and any terms and conditions set out in Exabytes Website, the terms and conditions set out in Exabytes Website shall prevail.

17.4. This Agreement is not intended to create a partnership, joint venture, or relationship of trust or agency, or employer and employee between the Parties. Exabytes shall be Your independent contractor.

17.5. We will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond Exabytes' reasonable control, including acts of God, fire, flood, theft, labour dispute or other industrial disturbance, systemic electrical, telecommunication, or other utility failure, earthquake, storm or other element of nature, blockage, embargo, riot, act or order of government, act of terrorism, or war.

17.6 In case any provision in the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

17.8. The failure of any Party to enforce any right resulting from breach of any provision of this Agreement by the other Party shall not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

17.9. This Agreement is binding on the Parties and enure to the benefit of their respective assign and successor, including liquidator and/or receiver.

17.10. In the event any of this term, condition and provision or those of any schedule, additional term, condition or policy published on Exabytes Website, or other addendum will be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision, additional term, condition or policy published on Exabytes Website, or other addendum will to that extent be severed from the remaining terms, conditions and provisions, additional terms, conditions or policies published on Exabytes Website, or other addendum which will continue to be valid to the fullest extent permitted by law.

17.11. The Parties' rights and obligations, which, by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.



17.12. All communication and notice to be made or given pursuant to this Agreement must be in the English language.

17.13 A person who is not a party to this Agreement has no right to enforce any terms of this Agreement. The application of the Contracts (Rights of Third Parties) Act 2001 (No. 39 of 2001) and any subsequent amendment or replacement thereof are expressly excluded.

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