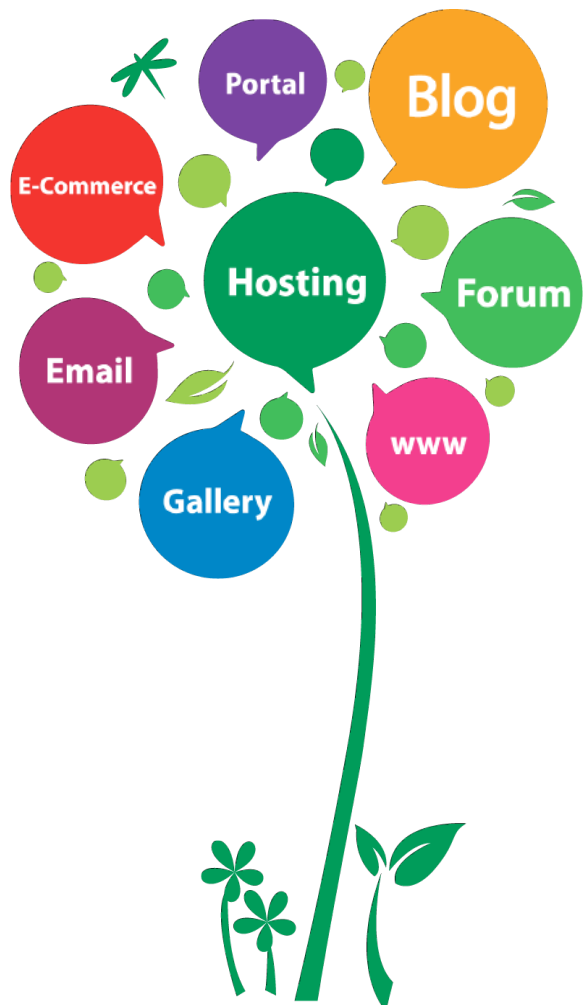




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## Exabytes.com Terms of Service.

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V2.0.0

by Chan Kee Siak

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# Exabytes.com Terms of Service.

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***Last updated: 1st Oct 2011.***

This Exabytes.com Terms of Service (the "**Agreement**") contains the terms and conditions that govern Your access to and use of the Service Offerings (as defined below) and is an agreement between Exabytes Network Sdn Bhd ("**Exabytes**") and You or the entity You represent ("**You**"). This agreement takes effect when You click an "I Accept" button or check box presented with these terms, or when You click an "Order" button, or when You use any of the Services (the "**Effective Date**"). You represent to us that You are lawfully able to enter into contracts (e.g. You are not a minor). If You are entering into this Agreement for an entity, such as the company You work for, You represent to us that You have legal authority to bind that entity. You acknowledge that You have read the Agreement, and You agree to its terms and conditions and all policies posted on the Exabytes Website.

As referred to in this Agreement, and

## **1. Definitions and Interpretations.**

"**API**" refers to an application program interface.

"**Business Hours**" refers to a period of time commencing from 9.00 a.m. to 6.00 p.m. on any Monday to Friday excluding a Public Holiday based on Malaysia calendar.

"**Exabytes Website**" refers to the Site located at the URL <http://www.Exabytes.my>, <http://www.exabytes.com>, or any other successor sites owned or maintained by Exabytes.

"**Exabytes Internet Server**" refers to Exabytes or its affiliates' computer system that the Customer connects to receive the Services.

"**Services**" refers to the web services made available by Exabytes or its affiliates.

"**Site**" or "**Website**" refers to a World Wide Web site.

## **2. Term.**

2.1. **Generally.** The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by You or Exabytes in accordance with the Termination Clause of this Agreement.

2.2. **Term.** Unless sooner terminated pursuant to other terms of this Agreement, and except as otherwise provided in this Agreement or other Supplemental Agreement, this Agreement shall be for an initial term of one month and shall be automatically renewed each month for additional one-month period.

2.3. **Special Promotion Terms.** If you have subscribed to the Services via special campaigns or promotions, the special terms and conditions of the respective campaigns or promotions (“Campaign Terms & Conditions”) shall prevail in the event of conflict between the terms and conditions of this Agreement and the Campaign Terms & Conditions, unless expressly provided in the Campaign Terms & Conditions.

### 3. Fees and Payment.

3.1. **Generally.** Upon submission of the Order and acceptance by Exabytes, You shall pay to Exabytes a refundable deposit and other charges, fees and rentals for the Services and/or equipment, as the case may be, which shall be at the rates prescribed on the Exabytes website from time to time and payable in advance or at such other time in accordance with Exabytes’ policy or requirements. The said charges, fees and rentals shall commence from the Effective Date.

3.2. **Pay Promptly.** You shall promptly pay on demand by Exabytes and at the times stipulated in such demand all charges, fees, rentals, costs or other amounts in connection with the Services. You shall continue to be liable for any applicable charges during the period of interruption or loss of Services from any cause whatsoever.

3.3. **Prepayment.** Exabytes may accept prepayment for services to be provided under this Agreement, but such acceptance shall not modify or extend the term of this Agreement.

3.4. **Monthly Service Fees.** Fees for service ordered by You shall begin on the date of the initial order and that date shall serve as the monthly anniversary date (“Anniversary Billing Date”) for all future billings including one time fees, upgrades, additional services, cancellations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month.

3.5. **Upgrade Fees.** Upgrades ordered on the Anniversary Billing Date will be billed for a full month service and will continue each month on the Anniversary Billing Date. Upgrades ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.

3.6. **Hourly Service Fees.** For any services offered by Exabytes on an hourly basis (“Hourly Services”), You shall specify the period of time for which the Hourly Services are requested, or cancel at any time. The minimum period of time for which Hourly Services may be requested is one (“1”) hour and Customer will be billed in full hourly increments, and no breakdown by minutes shall be permitted. Unless otherwise specifically stated in the Terms, Customers who request Hourly Services agree to all terms and conditions in Exabytes Terms, including but not limited to these Terms and the AUP. You will be billed for Hourly Services and receive any SLA credits, if applicable, on the Anniversary Billing Date.

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- 3.7. **Additional Service Fees.** Additional services, not including Hourly Services, ordered on the Anniversary Billing Date will be billed for the full month service and will continue each month on the Anniversary Billing Date. Additional services ordered after the normal Anniversary Billing Date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing Anniversary Billing Date.
- 3.8. **One Time Fees.** One time fees, such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket with Exabytes' approval. One time fees, such as bandwidth overages and Exabytes overages are due and payable upon an invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket with Exabytes' approval.
- 3.9. **Full Payment.** All payments due to Exabytes under this Agreement shall be made in full, without deduction for any reason, including but not limited to, set-off, counterclaim or other equitable or lawful claim.
- 3.10. **Returned Item Fees.** Accounts with returned checks and/or e-checks will be assessed a returned item fee as per described in **Appendix-I**.
- 3.11. **Late Fees.** Any payment not received within twenty (20) days of the invoice due date, will be assessed a late payment fee of one and one-half percent (1 1/2%) per month or the highest rate allowed by applicable law, whichever is higher, with a minimum of Late Fee as per described in Appendix-I. You shall pay to Exabytes all expenses incurred by Exabytes in exercising any of its rights under this Agreement or applicable law with respect to a Payment Default or other breach by you, including, but not limited to, reasonable attorneys' fees and the fees of any collection agency retained by Exabytes. Late Fees will continue to accrue as long as there is an outstanding balance.
- 3.12. **Re-Activation Fee for Shared Account.** If Exabytes suspends your shared account for non-payment, You shall be allowed to re-instate Your use of the Services within Thirty (30) business days of suspension upon approval from Exabytes and full payment of balances due. A Re-activation Fee as per **Appendix-I** will be applied.
- 3.13. **Re-activation Fee for Cloud Server, Reseller Account, Virtual Private Server, Dedicated Server, Co-location Account.** If Exabytes disconnects your Cloud Server, Reseller Account, Virtual Private Server, Dedicated Server, Co-location Account for non-payment, You shall pay a Re-Activation Fee as per **Appendix-I** prior to any Re-Activation of Your server and notify Exabytes with proof of payment. Once payment has been received, Your account will be activated within Forty-eight (48) Business Hours. Exabytes will maintain an archival copy of Your data files for five (5) days after Exabytes disconnects the server.

- 3.14. **New Service Fees.** Fees and charges for any new Service or new feature of a Service will be effective when Exabytes post updated fees and charges on the Exabytes Website unless Exabytes expressly state otherwise in a notice. Exabytes may increase or add new fees and charges for any existing Services by giving You at least a 30-day advance notice.
- 3.15. **Cancellation Fees.** If You cancel any order after the same has been accepted by Exabytes, You shall be liable to pay a cancellation fee, if any, at Exabytes prescribed rate for cancellation.
- 3.16. **Changes of Fees.** Exabytes may vary its charges from time to time by returning notice to You. All variations will take effect from the date specified in the notice and You shall be bound to observe and comply with such variations.
- 3.17. **Refundable Fees.** Upon termination of this Agreement you will receive a prorated refund of any pre-paid, refundable fees for the remainder of any term. Fees for certain services, including but not limited to domain name registration and renewal, setup fees, one time fees, shipping and handling, SSL certificate fees, software license fees, technical charges, unused bandwidth, unused disk space, unused backup space, are not refundable unless provided otherwise specified at Exabytes Website. Exabytes may, in its sole discretion, refund other amounts as it deems necessary or advisable.
- 3.18. **Money Back Guarantee.** Your Services may be eligible to the Exabytes' Money Back Guarantee and subject to the Terms of Exabytes' Money Back Guarantee Policy as published on Exabytes Website.
- 3.19. **Uptime Guarantee.** Your Services may be eligible to the Exabytes Uptime Guarantee and may be eligible to Outage Event Credit in the form of a credit against future bill of amounts payable by You for the provision of the service subject to the Terms of Exabytes Uptime Guarantee Policy as published on Exabytes Website.
- 3.20. **Transfer of Credit.** Exabytes may, at its absolute discretion and at any time, set off, consolidate or combine accounts or transfer any monies outstanding to the credit of Your account with Exabytes or any of its related companies of whatever description towards the reduction or discharge of any sum due to Exabytes by You under this Agreement.
- 4. Taxes.**
- 4.1. **Generally.** You will be responsible for the payment of all taxes, duties (including stamp duty), fees and other charges made by any government authority in relation to this Agreement (other than taxes payable on the overall income of Exabytes).
- 4.2. **Indemnity.** You will pay and indemnify and hold Exabytes harmless from any and all taxes associated with or arising from Your use of the Services, including any penalties and interest and any costs associated with the collection or withholding thereof.

## 5. **Use of the Service Offerings.**

- 5.1. **Generally.** You may access and use the Services in accordance with this Agreement. Service Level Agreements (“SLA”) may apply to certain Services. You will adhere to all laws, rules, and regulations applicable to Your use of the Services, including the Acceptable Use Policy and other Policies as published on Exabytes Website.
- 5.2. **Your Account.** To access the Services, You must create an Exabytes Account associated with a valid e-mail address. You are also known as Primary Contact of Your account. Unless explicitly permitted by the Terms of Service, You may only create one account per email address. You are responsible for all activities that occur under Your account, regardless of whether the activities are undertaken by You, Your employees or a third party (including Your contractors or agents) and, except to extent caused by our breach of Agreement.
- 5.3. **Secondary Contact.** You may appoint a second person as the secondary contact for Your Exabytes Account. You are responsible for all activities that occur under Your account done by Your secondary contact.
- 5.4. **Unauthorized Access.** Exabytes and its affiliates are not responsible for unauthorized access to Your account. You shall contact us immediately if You believe an unauthorized third party may be using Your account or if Your account information is lost or stolen.
- 5.5. **Update Contact Information.** In the event which You or Your secondary contact’s email address is no longer valid and up to date in our billing system, You may request us to update Your contact information by filling up Billing Account Primary Contact Email Change Form. You acknowledge and undertake that the information provided is true and accurate and You shall keep Exabytes indemnified against all claims, demands, proceedings, losses or damages costs of whatsoever that may be brought against or suffered by Exabytes as a result of Exabytes agreeing or conceding to Your request above-states.
- 5.6. **Transfer Account Ownership.** In the event that You wish to transfer Your account to a new person, You can appoint a new person to replace You as the primary contact for Your Exabytes Account. You can do this by updating the primary contact’s information in Exabytes Billing System. By appointing a new Primary Contact, You acknowledge that the new contact is fully aware and agreed to be bound by the Exabytes Terms and Conditions of this agreement.
- 5.7. **Third Party Content.** Third Party Content, such as software applications provided by third parties may be made available directly to You via other companies or individuals under separate terms and conditions, including separate fees and charges. Because Exabytes may not have tested or screened the Third Party Content, Your use of any Third Party Content is at Your sole risk and Exabytes shall not be liable for any

infringement on intellectual property rights (e.g. copyright, trademark, patent or other proprietary rights)

## 6. **Changes.**

6.1. **To the Services.** Exabytes may change, discontinue, or deprecate any of the Services (including the Services as a whole) or change or remove features or functionality of the Services from time to time. Exabytes will notify You of any material change to or discontinuation of the Services.

6.2. **To the APIs.** Exabytes may change, discontinue or deprecate any APIs for the Services from time to time but will use commercially reasonable efforts to continue supporting the previous version of any API changed, discontinued, or deprecated for twelve (12) months after the change, discontinuation, or deprecation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).

6.3. **To the Service Level Agreements.** Exabytes may change, discontinue or add Service Level Agreements from time to time.

## 7. **Provision of Services.**

7.1. **Generally.** At the request of You and subject to acceptance by Exabytes, Exabytes will provide the Services.

7.2. **Maintenance of Hardware and Software.** Unless otherwise indicated in this Agreement, the Services shall not include the provision or maintenance of any computer equipment or software required by You to connect to the Exabytes Internet Server.

7.3. **None Guaranteed of Services.** Exabytes does not guarantee or warrant the availability of the Services or continuous, uninterrupted or secure access to the Internet.

7.4. **None Guaranteed of Backup.** Exabytes does not guarantee or warrant that the data stored in the Exabytes Internet Server will be backed up. You shall be responsible for keeping an independent backup of all data stored in the space allocated to You.

7.5. **Right to Suspend.** Exabytes reserves the right to suspend the Services or any part of them for operational reasons or in an emergency and the You shall not make any claim or compensation from Exabytes.

## 8. **Technical Support.**

8.1. **Generally.** Exabytes, either directly or through its assignee or licensee, shall provide Technical Support relating to the Your Services. Exabytes may refuse any and all

requests for Technical Support with or without reason, in its sole discretion. Any Technical Support that Exabytes may subsequently agree to provide to you shall be at Exabytes' sole discretion and once commenced, may be terminated at any time by Exabytes without prior notice to you and without any liability to Exabytes.

- 8.2. **Third Party Software Support.** Exabytes does not provide technical support for the third party software. The third party software is offered "as-is." the provision and offering of third party software by Exabytes does not constitute an endorsement of the third party software, nor can Exabytes make any representations or warranties regarding the use and functionality of such third party software.

## 9. **Security Of Data.**

- 9.1. **Generally.** You acknowledge that Exabytes shall not be liable for the security of Your data on any of Your Equipment or passing over the Services and that Exabytes shall have no obligation to ensure, and makes no representations or warranties concerning the security of such data. You shall be solely responsible for the data retrieved, stored or transmitted through the Services.

- 9.2. **Unauthorised Access.** You agree that Exabytes is not liable for any unauthorised access to Your data even when the access occurs as a result of a fault in equipment or software owned, operated or supplied by Exabytes.

- 9.3. **Log-In Credentials and Private Keys.** Exabytes log-in credentials and private keys generated by the Services are for Your internal use only and You may not sell, transfer or sublicense them to any other entity or person, except that You may disclose Your Log-in Credentials and private key to Your agents and subcontractors performing work on Your behalf.

- 9.4. **Other Security.** You are responsible for properly configuring and using the Services and taking the necessary steps to maintain appropriate security and protection of Your Content, which may include the use of encryption technology to protect Your Content from unauthorized access and make routine archiving of Your Content.

## 10. **Disk Space**

- 10.1. **Shared Hosting, Reseller Hosting, Software As a Services Account.** You may occupy only the amount of disk space on the Exabytes Server that is allotted by Exabytes according to the packages subscribed by You. Additional fees, specified in the hosting plans, will be charged for exceeding the disk space. Disk space measurement includes all customer content and generated content from their web site and includes but is not limited to Web Pages, Files, Images, Videos, Logs, Backup, Emails, Databases, SQL data, Mailing List data and data in Your directories for virtual accounts. Exabytes is not responsible for measurements provided by individual control panel software, which is Third party software not controlled by Exabytes, which may or may not include all of the customer data in their measurements.



10.2. **Cloud Server, Virtual Private Servers and Dedicated Server.** The Disk Drive and/or Disk Space Quota for these accounts are hard quota based and You have full access and rights to the disk space. Available disk space for You includes the space required for the Operating System, Control Panel and other Services that come with the server setup which is selected by You. You have full control of all disk space for these accounts and may remove, delete and/or alter the installed files and configurations.

## 11. **Bandwidth**

11.1. **Generally.** All services including, Shared Hosting Account, Cloud Server, Virtual Private Server (VPS), Dedicated Server and Colocation Accounts are limited only to port speed. Default port setting is One (1) Mbps. Additional fees, specified in the account plan will be charged for exceeding the network bandwidth allowance of Your selected plan/server.

## 12. **Backup Files and Processing**

12.1. **Generally.** Exabytes does not guarantee the existence, accuracy, or regularity of its backup services, and therefore, You are responsible for making back-up files in connection with its use of the services. The accuracy and quality of backup processes provided by third party software, such as the individual third party control panels, is not guaranteed by Exabytes.

12.2. **Large Disk Usage Account.** Exabytes reserves the right to remove shared hosting accounts that exceed One Hundred (100) GB disk usages from our backup system.

12.3. **Large Inode Files Account.** Shared Hosting Account found to be exceeding the Fifty Thousand (50,000) inode (files) limit will automatically be removed from our backup system.

12.4. **On Board Backup.** On Dedicated Servers with the on-board backup option, You are paying for the additional disk drive only. Exabytes will provide and install the backup script for You upon request, but the running of cron jobs and services is Your responsibility. The backup script can be set up to generate a daily email with results to assist You in monitoring. For mission critical data, Exabytes highly recommends higher quality off-server backup services than what an on-board backup drive can provide. Doing periodic local backups is also highly recommended and a prudent business practice.

12.5. **Fully Managed Backup.** You may choose to subscribe to additional fully managed Backup Service provided by Exabytes. The specific terms and prices are as per described on Exabytes Website.

12.6. **Other Backup.** You are responsible for properly configuring and using the Services and taking Your own steps to maintain appropriate backup of Your content.

**13. Domain Name.**

13.1. **Generally.** If requested by You, Exabytes will, as agent for You, apply for the domain name as requested by You (“Requested Domain Name”).

13.2. **Domain Registration.** If You choose to register a domain name(s) through Exabytes, You acknowledge and agree that:

- a) You will pay a registration fee(s) to register the domain name(s) with the applicable domain name registrar.
- b) Exabytes does not offer refund(s) for domain name registration(s) for any reason, including misspelling of the domain name.

13.3. **Domain Terms.** By registering a domain name(s) through Exabytes, You acknowledge and agree to the terms and conditions of the respective domain registry.

13.4. **None Guaranteed Domain Registration.** Exabytes does not guarantee that it will be successful in its application for the Requested DomainName.

13.5. **Domain Contact.** If the application for the Requested Domain Name is successful, then Exabytes will become the delegated domain name Administrative Contact and Technical Contact for the Requested DomainName.

13.6. **Domain Renewal.** Exabytes will renew Your Domain provided that:-

- a) Exabytes is the delegated domain name administrator, or the appointed reseller or the invoicing party of Your Domain Name at the scheduled time of expiry; and
- b) You are, at that time, the owner of the Domain Name; and
- c) You request Exabytes to renew the Domain Name; and
- d) You have paid for the domain name renewal fee to Exabytes.

13.7. **Domain Expiration.** Your Domain Name will become expired and may cause Your web site to become inaccessible on and after the expiry date if the Domain Name is not renewed on or before the expiry date. You shall renew the domain name at Your own cost and expense. In the event You failed to renew the domain name and caused the domain name to be expired or not being able to renew, You shall not make any claim or compensation from Exabytes.

13.8. **Domain Redemption Period.** Domain Redemption Period is an extra grace period hold by the registrar. It is imposed by the Registry and was instigated by ICANN in order to allow You a little more time to renew their domain name(s). To renew a Domain Name that falls under Domain Redemption Period, a Domain Redemption Fee may apply.

13.9. **None Guaranteed Renewal.** Exabytes does not guarantee that it will be successful in its application for the Requested Domain Name Renewal of Domain Name that is expired or falls under Domain Redemption Period.

**14. Customer's Responsibilities.**

14.1. **Customer's Content.** You are solely responsible for the development, content, operation, maintenance, and use of Your Content. For example, You are solely responsible for:

- a) The technical operation of Your Content, including ensuring that calls You make to any Service are compatible with then-current APIs for that Service;
- b) Compliance of Your Content with the Acceptable Use Policy, the other Policies, and the law;
- c) Claims relating to Your Content; and
- d) Properly handling and processing notices sent to You (or any of Your affiliates) by any person claiming that Your Content violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

14.2. **End User Violations.** You will be deemed to have taken any action that You permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Services. You are responsible for End Users' use of Your Content and the Services. You will ensure that all End Users comply with Your obligations under this Agreement and that the terms of Your agreement with each End User are consistent with this Agreement. If You become aware of any violation of Your obligations under this Agreement by an End User, You will immediately terminate such End User's access to Your Content and the Service Offerings.

14.3. **End User Support.** You are responsible for providing customer service (if any) to End Users. Exabytes does not provide any support or services to End Users unless we have a separate agreement with You or an End User obligating us to provide support or services.

14.4. **Computer Equipment.** You shall, at Your own expense, install and maintain the necessary computer equipment and software to enable connection to the Exabytes Internet Server, other than any equipment and/or software supplied by Exabytes under this Agreement.

14.5. **Harmful Content.** You agree that You will not distribute, electronically transmit or display any materials supplied by You --- or through You by a third party --- to any Exabytes server in connection with Customer's use of the Services which:

- a) Violate any state, federal or foreign laws or regulations;

- b) Infringe on any intellectual property rights (e.g. copyright, trademark, patent or other proprietary rights) of Exabytes or any third party;
- c) Are defamatory, slanderous or trade libelous;
- d) Are threatening or harassing;
- e) Are discriminatory based on gender, race, age or promotes hate which violate any Exabytes policy posted on the Exabytes Website including but not limited to those listed in Exabytes Acceptable Use Policy (AUP).
- f) Contain viruses or other computer programming defects which result in damage to Exabytes or any third party.

14.6. **Illegal Activity.** You agree that You will not use the Services:

- a) To send unsolicited or unwelcome or bulk electronic mail messages to anyone or otherwise cause excessive or disproportionate load on the Services;
- b) For any unlawful purposes such as, but not limited to, vice, gambling or other criminal purposes 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;
- c) For any purpose which is against public interest, public order or national harmony;
- d) To publish defamatory, infringing, obscene or other unlawful materials;
- e) In connection with the infringement of the copyright, patent, trademark, trade secret or other propriety rights of any third party or rights of publicity or privacy;
- f) 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;
- g) To resell the Services or otherwise provide the Services to anyone unless permitted by Exabytes.
- h) In violation of any laws relating to unfair competition, anti-discrimination or false advertising; or
- i) That result in distribution of viruses, Trojan horses, worms, time bombs, bots, or other similar harmful or deleterious programming routines

- 14.7. **Licensed Third Party Software.** You agree to use only properly licensed third party software in connection with the use of the Services.
- 14.8. **Reporting a Service Failure.** You shall, prior to reporting a Service failure or problem, carry out all necessary steps to determine the cause of the Service failure or problem.
- 15. Temporary Suspension.**
- 15.1. **Generally.** Exabytes may suspend Your or any End User's right to access or use any portion or all of the Services immediately upon notice to You if we determine:
- a) You or an End User's use of the Services (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services or the systems or Content of any other Exabytes customer, or (iii) may subject us, our affiliates, or any third party to liability;
  - b) You are, or any End User is, in breach of this Agreement,
  - c) You are delinquent on Your payment obligations for more than three (3) days; or
  - d) You have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.
- 15.2. **Effect of Suspension.** If Exabytes suspends Your right to access or use any portion or all of the Services:
- a) You remain responsible for all fees and charges You have incurred through the date of suspension;
  - b) You remain responsible for any applicable fees and charges for any Services to which You continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
  - c) You will not be entitled to any service credits under the Service Level Agreements for any period of suspension; and
  - d) Exabytes will not erase any of Your Content as a result of Your suspension, except as specified elsewhere in this Agreement.
  - e) Any such suspension shall not be a breach by Exabytes of this Agreement.
- 15.3. **Post-Suspension Assistance.** Unless Exabytes suspends Your use of the Services pursuant to Clause 14.5 or 14.6, during the 30 Days following suspension:
- a) Exabytes will not erase any of Your Content as a result of the suspension.

- b) You may retrieve Your Content from the Services only if You have paid any charges for any post-suspension use of Services and all other amounts due; and
- c) Exabytes will provide You with the same post-suspension assistance that generally make available to all customers. Any additional post-suspension assistance from Exabytes is subject to mutual agreement by You and Exabytes and additional Service Fee may apply.

15.4. **Re-activation Fee.** In the event of a suspension, Exabytes reserves the right to charge You a fee for the Re-activation of the Services in accordance to **Appendix-I**.

## 16. **Termination.**

16.1. **Termination.** Exabytes may terminate this Agreement immediately upon Thirty (30) days notice to You:

- a) if Exabytes' relationship with a third party partner who provides software or other technology Exabytes use to provide the Services expires, terminates or requires Exabytes to change the way Exabytes provide the software or other technology as part of the Services,
- b) if Exabytes believes providing the Services could create a substantial economic or technical burden or material security risk for Exabytes,
- c) in order to comply with the law or requests of governmental entities, or
- d) if Exabytes determine use of the Services by You or any End Users or Exabytes' provision of any of the Services to You or any End Users has become impractical or unfeasible for any legal or regulatory reason, or
- e) without having to give any reason.

16.2. **Immediate Termination.** Exabytes reserves the right to refuse services to anyone. Exabytes, in its sole discretion, may immediately terminate this Agreement if:

- a) You engaged in any of the activities as spelled out but not limited to in Clause 14 above; or
- b) Exabytes or You commits a material breach of its obligations under this Agreement which is incapable of remedy; or
- c) Exabytes or You commits 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 steps are taken or legal proceedings are 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 revenues and assets, or

- e) in the event any equipment or combination thereof, including hardware and software used by Exabytes in offering of its Services, become affected in their performance and/or functionality so as to render it impossible for Exabytes to continue to provide the Services. In such event the sole extent of Exabytes liability shall be the refund of any advance Subscription Fees paid by You for the duration of the interruption prior to termination.
- 16.3. **Termination Due to None Renewal.** Exabytes may terminate this Agreement if You failed to pay for the renewal fees of its Service on time upon renewal.
- 16.4. **Service Cancellation Information Page.** If You are terminating this Agreement, You must follow instructions for cancellation provided on the Service Cancellation Information page as published on Exabytes Website. All cancellation notice by You must be at least Thirty (30) days before the next renewal date.
- 16.5. **Termination Due to None Compliance by Customer.** If the Agreement or Services is terminated by You or by Exabytes due to non-compliance by You of any provisions in this Agreement prior to the expiry of the Initial Term, You shall pay Exabytes in full all charges, fees and rentals for the remainder of the said term.
- 16.6. **Relocation or Upgrade.** If You terminate the Agreement during the Initial Term as a result of relocation or in order to upgrade the Services, You shall not be liable to pay for the remainder of the monthly rentals for the Initial Term, provided You enter into a new Agreement with Exabytes for the Services at the new location or for the upgraded service immediately upon termination of this Agreement. The new Agreement between You and Exabytes for the new location or upgraded service will be based on the prevailing charges, rates and terms and conditions imposed by Exabytes.
- 16.7. **Fees.** On termination of this Agreement, You shall pay Exabytes:
- a) all amounts invoiced to You in accordance with this Agreement and unpaid as at the termination date together with the interest charged on those amounts; and
- b) all amounts incurred by You but not invoiced to You as at the termination date.
- 16.8. **Service De-activation.** If You terminates your account, Exabytes will de-activate the server/account on the day You specify the account is cancelled. Exabytes will not maintain an archival copy of your Web site(s) or files. It is your responsibility to remove any data off the server prior to the date provided in their cancellation notice.

- 16.9. **Rights.** Termination of this Agreement by either You or Exabytes for any reason whatsoever shall be without prejudice to any other rights, remedies or claims 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.
- 16.10. **Effect of Termination.** If Exabytes terminates Your right to access or use any portion or all of the Services:
- a) You remain responsible for all fees and charges You have incurred prior the date of termination;
  - b) You remain responsible for any applicable fees and charges for any Services to which You continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of termination;
  - c) You will not be entitled to any service credits under the Service Level Agreements for any period of post termination; and
  - d) Exabytes will erase ALL of Your Content as a result of Your termination, except as specified elsewhere in this Agreement.
  - e) Any such termination shall not be a breach by Exabytes of this Agreement.

## 17. **Proprietary Rights**

- 17.1. **Your Content.** As between You and Exabytes, You or Your licensors own all rights, titles, and interests in and to Your Content. We obtain no rights under this Agreement from You or Your licensors to Your Content, including any related intellectual property rights. You consent to Exabytes use of Your Content to provide the Services to You and Your End Users. Exabytes may disclose Your Content to provide the Services to You or Your End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).
- 17.2. **Adequate Rights.** You represent and warrant to Exabytes that:
- a) You or Your licensors own all rights, titles, and interests in and to Your Content and Your Submissions;
  - b) You have all rights in Your Content and Your Submissions necessary to grant the rights contemplated by this Agreement; and
  - c) None of Your Content, Your Submissions or End Users' use of Your Content, Your Submissions or the Services Offerings will violate Exabytes Acceptable Use Policy.



- 17.3. **Services License.** As between You and Exabytes, Exabytes or its affiliates or licensors own and reserve all rights, titles, and interests in and to the Services. Exabytes grants You a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the Term:
- a) Access and use the Services solely in accordance with this Agreement; and
  - b) Copy and use the Exabytes Content solely in connection with Your permitted use of the Services. Except as provided in this Section, You obtain no rights under this Agreement from Exabytes or its licensors to the Services, including any related intellectual property rights. Some Exabytes Content may be provided to You under a separate license, such as the Windows Server License, the Apache Software License, in which case that license will govern Your use of that Exabytes Content.
- 17.4. **License Restrictions.** Neither You nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither You nor any End User may, or may attempt to:
- a) Modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services are provided to You under a separate license that expressly permits the creation of derivative works), or
  - b) Reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services, or
  - c) Access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.
- 17.5. **Use of Licenses.** All licenses granted to You in this Agreement are conditional on Your continued compliance this Agreement, and will immediately and automatically terminate if You do not comply with any term or condition of this Agreement. During and after the Term, You will not assert, nor will You authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services You have used.
- 17.6. **Exabytes Trademark.** You may only use the Exabytes Trademark in accordance with the Trademark Use Guidelines as published on Exabytes websites.
- 18. Suggestions.**
- 18.1. If You provide any Suggestions to Exabytes or its affiliates, Exabytes will own all rights, titles, and interests in and to the Suggestions, even if You have designated the

Suggestions as confidential. Exabytes and its affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to Exabytes all rights, titles, and interests in and to the Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

## **19. Indemnity.**

19.1. You will defend, indemnify, and hold harmless Exabytes, its affiliates and licensors, and each of their respective employees, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning:

- a) Your or any End Users' use of the Service Offerings (including any activities under Your account and use by Your employees and personnel);
- b) Breach of this Agreement or violation of applicable law by You or any End User;
- c) Your Content or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising or marketing of Your Content; or
- d) A dispute between You and any End User. If Exabytes or its affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, You will also reimburse Exabytes for reasonable attorneys' fees, as well as Exabytes employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at Exabytes then-current hourly rates.

## **20. Modifications to the Agreement.**

20.1. Exabytes may from time to time, vary or modify the terms and conditions of this Agreement (including any Policies) by posting a revised version on the Exabytes Website. The modified terms will become effective upon posting or, if Exabytes notifies You by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, You agree to be bound by the modified terms. It is Your responsibility to check the Exabytes Website regularly for modifications to this Agreement. Exabytes last modified this Agreement on the date listed at the beginning of this Agreement.

## **21. Notice**

21.1. **Notice To You.** Exabytes may provide any notice to You under this Agreement by:

- a) Posting a notice on the Exabytes Website; or

- b) Sending a message to the email address that associated with Your account. Notices we provide by posting on the Exabytes Website will be effective upon posting and notices we provide by email will be effective when we send the email. It is Your responsibility to keep Your email address current. You will be deemed to have received any email sent to the email address then associated with Your account when we send the email, whether or not You actually receive the email.

21.2. **Notice To Us.** To give us notice under this Agreement, You must contact Exabytes as follows:

- a) By email to admin@exabytes.com.
- b) By Facsimile transmission to +604-630 8288; or
- c) By personal delivery, overnight courier or registered or certified mail to:

Exabytes Network Sdn Bhd  
1-18-8, Suntech @ Penang Cybercity,  
Lintang Mayang Pasir 3,  
11950 Bayan Baru, Penang, Malaysia.

21.3. **Update of Contact Information.** We may update the facsimile number or address for notices to us by posting a notice on the Exabytes Website. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

21.4. **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

## 22. **Law And Jurisdiction**

22.1. **Governed Law.** This Agreement shall be governed and construed in all respects in accordance with the laws of Malaysia and the parties hereto hereby submit to the jurisdiction of the Courts of Malaysia.

## 23. **Force Majeure.**

23.1. 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 our reasonable control, including acts of God, fire, flood, theft, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

## Appendix-I

	Exabytes.my	Exabytes.com	Exabytes.sg
Late Payment Interest	1.15% Per Month.	1.15% Per Month.	1.15% Per Month.
Minimum Late Fee	MYR15.00	USD5.00	SGD6.00
Returned Item Fee	MYR45.00	USD15.00	SGD18.00
Re-Activation Fee for Shared Accounts, and other services.	MYR80.00	USD25.00	SGD35.00
Re-Activation Fee for, Reseller Accounts, Virtual Private Server, Dedicated Server, Co-location Accounts.	MYR160.00	USD50.00	SGD70.00