

## **Pacnet Internet Terms & Conditions for Corporate Services**

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### **1. Definitions**

- 1.1. "This Agreement" means the completed Application Form (and its attachment(s), if any) and these Terms and Conditions herein as from time to time amended, modified or varied by PACNET (as defined below).

"Application Form" means the application or registration form in relation to the Service in the form prescribed by PACNET from time to time and completed in full and submitted by Customer to PACNET or any other written agreement between PACNET and Customer.

"Charges" means all subscription and other recurring fees, usage, connection, re-connection, cancellation and administrative charges, and other fees or charges payable by Customer for or relating to the Service and/or under this Agreement, including but not limited to any services or facilities provided by any other telecommunications service provider that PACNET has applied on behalf of Customer.

"Commencement Date" means the date when the Service will be provided to Customer pursuant to PACNET's acceptance of Customer's application for the Service.

"Corporate Broadband Service" means any one of the broadband Internet access services provided by PACNET to Customer who (i) has a valid Direct Exchange Line ("DEL") and/or subscribed for any other services or facilities from any other telecommunications service provider, as may be prescribed by PACNET from time to time in the Application Form, the Specific Terms or any other notification by PACNET to Customer; or (ii) has applied, or requested PACNET to apply on its behalf, any of the aforesaid services or facilities. The Corporate Broadband Service does not include DEL and/or any other services or facilities (as may be prescribed by PACNET from time to time in the Application Form, the Specific Terms or any other notification by PACNET to Customer), which must be applied for directly by Customer from any such other telecommunications service provider. The Corporate Broadband Service is not available for Direct Inward Dialing (DID), Private Automatic Branch Exchange (PABX), hunting line, Integrated Services Digital Network (ISDN), key telephone system and auxiliary lines or any other purposes or functions as may be set out in the Specific Terms or from time to time prescribed by PACNET in the Application Form, the Specific Terms or in any other notification by PACNET to Customer.

"Customers" means the persons whose applications to enter into this Agreement are accepted by Pacnet Internet (S) Limited or any of its subsidiaries, associated companies and affiliates (each of them hereinafter referred to as "PACNET", which term shall include its successors and assigns) and "Customer" shall mean any one of them.

"Dial-up Access Service" means Customer will be provided with a personal

user identification ("UI") and a password. Customer will use his own equipment and means (for example, telephone service and modem) to establish connection to Pacnet Internet for accessing the Service.

Access under the Dial-up Access Service that is available is the "Point-to-Point Protocol Access" or "PPP Access" (This is an account which allows Customer to use any TCP/IP software that supports Point-to-Point Protocol to connect to Pacnet Internet for access to the Internet.

Dial-up access is made in two ways:

- (a) "Easy Access" or "Unlimited Access", which is available to both individual and corporate Customers; and
- (b) "Network ISDN Dial-Up Access" which is available to corporate Customers who connect their Local Area Network to PACNET's using a standard voice-grade telephone line and a dial-up router.

"End User Service Information" or "EUSI" means all information PACNET obtains pursuant to the provision of the Service under this Agreement including but not limited to information in respect of Customer's (a) usage patterns (including number of calls, times of calls, duration of calls and parties called); (b) the services used by Customer; (c) Customer's telephone number and network configuration; (d) Customer's location information; and (e) Customer's billing name, address and credit history.

"IDA" means the Infocomm Development Authority of Singapore or its successor authority.

"Leased Line Access Service" means that PACNET may, at its sole discretion, apply for a domain name and Internet Protocol address(es) with the relevant authorities for Customer. A local leased line may also be leased from any other telecommunications service provider for and on behalf of Customer, and installed for Customer by such other relevant telecommunications service provider. In the event that PACNET decides to do so, Customer shall undertake to pay for all such leased line charges incurred by PACNET for and on behalf of Customer, in the course of providing the Leased Line Access Service to Customer. Customer will use his own IDA-approved equipment recommended by PACNET to establish connection to PACNET for accessing the Service. PACNET is a TCP/IP-based network and Customer's equipment must conform to the standard equipment list specified by PACNET and/or IDA.

"Minimum Period of Subscription" means (a) 12 months from the Commencement Date; (b) such other period as may be stated in the Application Form or the Specific Terms in respect of the Service or in any other notification by PACNET to Customer; or (c) such other period as may be otherwise agreed to in writing by PACNET and Customer.

"person(s)" includes individual(s), corporation(s) and unincorporated bodies of persons.

"Service" means any provision of services to access and/or utilize the Internet including services to host web pages on its servers and to provide electronic mail accounts together with any other value-added features (excluding one time services or professional services which are governed by separate terms and conditions) (whether for a payment of fee or not) as may be introduced or offered from time to time by PACNET, such service being provided under the name of "Pacnet Internet". The Service includes but is not limited to Dial-up Access Service, Leased Line Access Service or Corporate Broadband Service.

"Specific Terms" refers to the terms and conditions prescribed or imposed by PACNET in relation to the provision of any particular Service, including any specific terms and conditions agreed between Customer and PACNET in connection with any application or subscription by such Customer for the relevant Service.

- 1.2 Words importing the singular shall include the plural and vice versa and words importing one gender shall include the other gender.
- 1.3 The section headings herein are used for convenience only and shall have no substantive meanings.
- 1.4 Provision of the Service is subject to these Terms and Conditions and the Specific Terms. By completing and submitting the Application Form to PACNET, Customer acknowledges that he/she has read these Terms and Conditions and the Specific Terms.
- 1.5 PACNET reserves the right to approve or reject any Customer's application for the Service without ascribing any reason whatsoever for its decision.
- 1.6 References to an Act shall include any modification, extension or re-enactment thereof then in force and all instruments, orders and regulations then in force and made under or deriving validity from the relevant Act or provision.

## **2. Charges**

- 2.1 Customer shall pay the Charges at the applicable rates indicated in the Application Form or such other rates as may be prescribed by PACNET from time to time and notified to Customer in advance in accordance with the terms herein. The invoice(s) issued by PACNET to Customer shall be on a monthly basis unless otherwise stated in the Application Form. In the event of late payment by Customer of any sums due under this Agreement (except for any amount disputed by Customer in accordance with clause 2.5 below, and notwithstanding any other rights and/or remedies available to PACNET, including but not limited to PACNET's right to suspend or terminate Customer's account under clauses 9 and 11 below), PACNET shall have the right to charge interest at the rate of 12% per annum on the outstanding amount from the date of invoice until the date of full payment (both before and after judgment).

- 2.1A All Charges as reflected in the invoice(s) issued by PACNET to Customer are based on the rates as set out in the Application Form, the Specific Terms, and/or such other materials provided (whether in written or electronic form) or as may be otherwise communicated to Customer prior to Customer's application for the Service. Customer is deemed to have knowledge of, and is

agreeable to such rates upon PACNET's acceptance of Customer's application for the Service. PACNET shall use reasonable endeavours to ensure that the invoice(s) issued are clear and accurate.

- 2.2 Customer's liability for the Charges shall accrue from the Commencement Date unless otherwise stated by PACNET.
- 2.3 Customer shall pay and maintain such deposits with PACNET as PACNET may require and shall increase the amount of such deposits from time to time when so required by PACNET unless otherwise stated by PACNET.
- 2.4 Customer shall be liable for and shall pay the Charges within thirty (30) days from the date of the invoice or as otherwise specified by PACNET or stated in the invoice.
- 2.5 If Customer reasonably believes that any charge for the Services is incorrect (including improper calculation or in respect of the provision of a service other than as agreed) and disputes in good faith the amount in an invoice or any part thereof, Customer must notify PACNET in writing within thirty (30) days of the date of the invoice setting out the reasons for the dispute and the exact amount disputed.
- 2.6 PACNET and Customer shall use their best efforts to resolve the dispute notified under clause 2.5 above within thirty (30) days from the date on which the dispute was first notified to PACNET in accordance with clause 2.5 above.
- 2.6A PACNET will conduct a complete and objective review of Customer's complaint, and will provide a written response, within thirty (30) days of receiving Customer's notification referred to in clause 2.5 above.
- 2.7 Where an invoice is in dispute, the undisputed portion shall be paid by Customer to PACNET within such time as is stated in the invoice but shall not be required to pay any disputed amounts under clause 2.5 above, pending resolution of such dispute, provided that Customer notifies PACNET of the disputed charges prior to the date on which the payment is due. If the dispute is resolved in PACNET's favour, Customer shall pay the outstanding portion of all invoiced amounts within such time as is stated in the respective invoices, or two (2) weeks from the date of resolution of the dispute, whichever is later and PACNET shall be entitled to recover from Customer interest at the rate of 12% per annum on such previously disputed amount.
- 2.7A Where Customer chooses to dispute an amount that has already been paid, Customer may dispute this amount within one year starting from the date of the relevant invoice. The procedures set out in clauses 2.5 to 2.7 herein shall similarly apply. If the dispute is resolved in Customer's favour, PACNET shall return the disputed amount to Customer within two (2) weeks from the date of resolution of the dispute.
- 2.7B Where Customer purchases a pre-paid service and chooses to contest any charge, Customer will have one year to do so starting from the date on which the charge was deducted.
- 2.8 In the event that multiple log-ins are made by multiple users via Customer's account, Customer will be liable for and pay on demand to PACNET such amounts equivalent to the sum as if these multiple users had signed up individually with PACNET. Customer shall be liable for and shall pay on demand to PACNET any Charges incurred by any unauthorized or illegal log-ins for any reason whatsoever not due to any gross negligence or willful

default on the part of PACNET.

- 2.9 Customer shall be responsible and PACNET shall not be liable for any Charges of whatsoever nature incurred in connection with or pursuant to the use or purported use whether authorized or unauthorized of Customer's account including without limitation international telecommunications roaming charges, local telecommunications service charges and charges imposed by third parties.
- 2.10 PACNET shall not switch Customer from one telecommunication service provider to another to provide the Services to Customer without Customer's consent. In addition, Customer shall not be required to pay for any service that Customer did not consent to receiving.

### **3. PACNET's Rights**

Subject to any applicable laws, regulations or the directions of any relevant authority, PACNET shall have the right to manage and control the access to computer systems and information stored within the PACNET system in a manner deemed appropriate by PACNET and PACNET may pursuant to such applicable laws, regulations or the directions of any relevant authority, vary, amend or suspend the Service or any part thereof including but not limited to the removal of content of web pages hosted on its servers, the removal of postings on its news service and the blocking of electronic messages through its mail servers.

### **4. Customer's Obligations**

Customer shall:

- (a) be solely responsible for the set-up or configuration of his or its IDA-approved equipment for access to the Service;
- (b) comply with all notices or instructions given by PACNET from time to time in respect of the use of the Service including but not limited to the guidelines as stated in PACNET's Acceptable Use Policies as set out in PACNET's web page, from time to time;
- (c) be solely responsible for obtaining, at his own cost, all licenses, permits, consents, approvals and intellectual property or other rights as may be required for using the Service;
- (d) comply with the rules of any network to which Customer accesses through the Service;
- (e) be solely responsible for all information retrieved, stored and transmitted through the Service by him;
- (f) be solely responsible for managing the use of the storage capacity provided so that it does not exceed the capacity allocated to him;
- (g) obtain the prior written approval of PACNET if he contemplates that using the Service for any activity would or is likely to generate a change in traffic in excess of his normal usage and/or is likely to cause congestion in PACNET's network;
- (h) provide at his own expense, when so required by PACNET, all facilities or resources necessary for the proper provision of the Service including without limitation power points, electricity, conduits, pipes, access, license, or easement; and
- (i) comply with PACNET's advice to upgrade at his own expense his existing

facilities, if in the opinion of PACNET they are inadequate to cope with his telecommunications traffic and/or is likely to cause congestion in PACNET's network;

- (j) not intentionally attack PACNET's network system and/or the Service, nor create or cause a situation whereby other Customers are affected in their enjoyment and/or use of the Service; and
- (k) not use PACNET's network system and/or the Service to cause harm to any third party including, but not limited to circumvention of user or security of any host, network or account, and not to launch a technical attack on other users of the Service or other Internet service.

## **5. Prohibited Use**

### **5.1 Customer undertakes:**

- (a) to comply with and shall not contravene all applicable laws, regulations and directives of the Republic of Singapore relating to the Service including without limitation the Broadcasting and Television Act, Common Gaming Houses Act, Computer Misuse Act, Copyright Act, Films Act, Indecent Advertisements Act, Maintenance of Religious Harmony Act, Official Secrets Act, Penal Code, Public Entertainment Act, Telecommunications Act (including any regulation made pursuant thereto and any terms and conditions of any license granted to PACNET by IDA) and the Undesirable Publications Act, as well as any policies, directives and guidelines set by the IDA and the Media Development Authority;
- (b) where it is a corporate Customer, not to allow any person other than the authorized person(s) named in the Application Form to use the Service;
- (c) not to use the Service for any unlawful purpose including without limitation criminal purposes;
- (d) not to use the Service to send or receive any message that is offensive on moral, religious, racial or political grounds or of an abusive, indecent, obscene or menacing nature;
- (e) not to persistently send messages without reasonable cause or for causing any threat, harassment, annoyance, inconvenience or anxiety to any person;
- (f) not to introduce any computer virus into the Internet or PACNET's system;
- (g) not to infringe any intellectual property rights of any person or retain information in any computer system or otherwise with an intention to do so;
- (h) not to gain unauthorized access to any computer system connected to the Internet or any information regarded as private by other persons; and
- (i) not to share the Service with any person without the prior written approval of PACNET and shall use the Service only for the purpose for which it is subscribed.

### **5.2 Customer shall be solely responsible, and PACNET shall not be liable in any manner whatsoever, for ensuring that in using the Service, all applicable laws, rules and regulations and all the terms prescribed by any telecommunications service provider, the Media Development Authority and IDA for the use of any telecommunications systems, service or equipment and content published on the Internet shall be at all times complied with.**

## **6. Security**

- 6.1 As information transmitted through the Internet in general is not confidential, PACNET cannot and shall not guarantee the privacy or protection of Customer. Customer shall take all such measures as may be necessary (including without limitation changing his password from time to time) to protect the secrecy of his User Identification ("UI") and/or password and shall not reveal the same to any other person(s). PACNET shall not be liable for any loss or damage incurred by Customer or third parties due to any wrongful use of Customer's account by Customer or any wrongful, unauthorized or fraudulent use of Customer's account by any other person.
- 6.2 Where an UI is necessary to access the Service, Customer shall use only his or its own UI.
- 6.3 Customer acquires no rights to any mailbox number, the UI, circuit reference and any codes assigned to him by PACNET and except as otherwise provided herein, PACNET reserves the right to change or re-assign the same to Customer at its sole discretion without being liable to Customer for any damages or losses suffered.
- 6.4 Customer agrees to immediately notify PACNET for PACNET's informational purposes only of any unauthorized use of Customer's account or any other breach of security known to Customer.
- 6.5 PACNET does not and will not perform system backups on information stored within its system. PACNET is not responsible or under any obligation to provide historical data or to assist Customer in downloading, faxing or reading to Customer any of its or his data or information stored within the system including but not limited to electronic mails.
- 6.6 If at any time Customer requests PACNET to reset his or its password (such request to be made in writing unless otherwise agreed by PACNET), Customer shall forthwith after ascertaining that his or its password has been reset, change such password to a new password.

## **7. Software**

- 7.1 In connection with any software provided by PACNET for use with the Service:
- (a) Customer shall be solely responsible for ensuring that such software is suitable for his or its needs and the compatibility of such software for use with any equipment used by him, whether or not any changes are introduced to the Service by PACNET; and
  - (b) Customer shall adhere to all instructions and notices (written or otherwise) given by PACNET from time to time regarding the use of such software.
- 7.2 PACNET shall not be responsible in any way whatsoever for any software not distributed, approved or recognized by PACNET including any software downloaded from the Internet or purchased from third parties. In the event that Customer uses any such software in connection with the Service, PACNET shall not be liable for any fault, loss and/or damage of whatever nature resulting directly or indirectly from such use.

## **8. Change in Service**

- 8.1 Unless otherwise agreed to by PACNET:

#### Access Speed

Customer may only change the access speed as selected by him on the Application Form by terminating this Agreement in accordance with clause 9.1 below and entering into a new agreement with PACNET, and the effective date of such change shall be the first day of the calendar month subsequent to the date of the new agreement entered by Customer and accepted by PACNET.

#### Type of Service

Customer may only change the type of Service selected by him on the Application Form by terminating this Agreement in accordance with clause 9.1 below and entering into a new agreement with PACNET, and the effective date of such change shall be the first day of the calendar month subsequent to the date of the new agreement entered by Customer and accepted by PACNET.

#### 8.2 Usage Plans

Customer may change the usage plan selected by him on the Application Form by giving thirty (30) days prior notice in writing to PACNET. The effective date of such change shall be the first day of the calendar month following the giving of such notice or such other date as may be prescribed by PACNET.

### **9. Term and Termination of Service**

- 9.1 Either PACNET or Customer may terminate this Agreement by giving thirty (30) days' notice in writing or such other notice period as may be otherwise stipulated by PACNET from time to time in any Application Form or Specific Terms in respect of the Service or in any other notification by PACNET to Customer in accordance with the terms herein.
- 9.2 If automatic renewal is provided in the Application Form, the Specific Terms or any other notification by PACNET to Customer prior to Customer's application for the Service, the Service shall, upon the expiry of the initial term as stated in such Application Form, the Specific Terms or notification (the "Initial Term") be automatically renewed for a further period equivalent to the Initial Term ("Renewed Term"), upon the prevailing terms and conditions (including fees for the Service) at the relevant time, unless otherwise determined by PacNet. Notwithstanding the forgoing, Customer is entitled to provide to PACNET written notice for non-renewal no later than thirty (30) days prior to the expiry of the Initial Term. The foregoing provisions of this clause 9.2 on renewal shall apply mutatis mutandis, to the expiry of the Renewed Term and each subsequent renewal.
- 9.3 PACNET may in its sole discretion waive or accept in writing a shorter period of notice from Customer than those referred to in clause 9.1 above.
- 9.4 Clause 9.1 above is subject to the condition that where notice is given by Customer on or after the 20th day of a calendar month, this Agreement will be terminated only on the last day of the following calendar month.
- 9.5 Notwithstanding clause 9.1 above, PACNET may terminate this Agreement with immediate effect:
  - (a) if Customer has breached any of the terms or conditions of this Agreement

(including without limitation clauses 4 and 5 herein) and Customer has not rectified the said breach within two (2) weeks from written notification by PACNET, stating the nature of the breach and that failure to rectify such breach shall entitle PACNET to terminate the Service;

- (b) if Customer ceases to carry on its business;
- (c) if PACNET is acting in compliance with a requirement of any relevant regulatory authority or law enforcement body; or
- (d) if in the opinion of PACNET, Customer is likely to create imminent physical harm (such as but not limited to interruption, disruption or congestion) to PACNET's network or to defraud PACNET.

9.6 In the event Customer is or PACNET has reasonable grounds to believe that Customer is using the Service to engage in, whether directly or indirectly, fraudulent, illegal or improper activities, PACNET shall be entitled to inform IDA or any relevant authority without notice to Customer, and act in conformity with the authority's directions or guidelines (which may include terminating the Service).

9.7 In the event PACNET intends to discontinue operations or any particular service, PACNET shall give reasonable written notice to all affected Customers and will take reasonable measures to avoid any service interruption to such affected Customers and where a Customer has made an advance payment and, PACNET will refund to Customer a proportionate share of the said advanced payment.

#### **10. Liabilities of Customer upon termination**

10.1 In the event of termination of this Agreement pursuant to clause 9 above, without prejudice to any other remedies available to PACNET, Customer shall be liable for all Charges up to and including the expiry date of the relevant Minimum Period of Subscription or the date of termination stated in the notice given in accordance with clause 9.1, whichever is the later.

10.2 In the event of termination of this Agreement other than in accordance with clause 9.1 above, without prejudice to any other remedies available to PACNET, Customer shall be liable for all Charges up to and including the expiry date of the relevant Minimum Period of Subscription or up to the end of the duration of notice required to be given in respect of the Service, whichever is the later.

10.3 The above amounts payable by Customer upon termination shall be payable within thirty (30) days of the relevant termination date.

10.4 Without prejudice to the foregoing, upon termination of this Agreement, PACNET may use such deposits paid by Customer to offset any amount due from Customer under this Agreement or any other agreement between PACNET and Customer, and the balance thereof shall be refunded to Customer free of interest.

10.5 Without prejudice to the foregoing, upon termination of this Agreement for any reason whatsoever, if Customer fails to pay all relevant Charges, save in respect of the Charges referred to in clause 10.1 and 10.2 above (and such relevant Charges are not subject to dispute under clause 2.5 above), PACNET reserves the right to withhold any of Customer's equipment located on PACNET's premises (if any) until such time that Customer has made full

payment of all such outstanding Charges, together with any applicable interest.

## **11. Suspension of Service**

- 11.1 Without prejudice to any other rights or remedies of PACNET and notwithstanding any waiver by PACNET of any previous breach by Customer, PACNET may (but is under no obligation to) at any time and at its sole discretion (but subject to any applicable laws, regulations or directions of any relevant authority) suspend the Service or any other service or services provided by PACNET with at least one (1) week's prior written notice in the event (a) that any undisputed monies payable by Customer for the Service or otherwise under this Agreement is not settled in full within such time as is stated in the invoice or any deposit or increase thereof required by PACNET is not paid by Customer; or (b) where Customer applies for the Service online or via telephone and fails to submit the duly signed Application Form or any other form of acknowledgment or applications as may be required by PACNET within one (1) week of Customer's application.
- 11.1A PACNET further reserves the right to suspend the Service immediately: pursuant to the directions of IDA or any other relevant authority, where Customer has used the Service to engage in, whether directly or indirectly, any fraudulent, illegal or improper activities and PACNET shall act in conformity with IDA or such other relevant authority's directions or guidelines. Upon such suspension, Customer shall be liable for all Charges incurred up to and including the date of such suspension and unless otherwise informed by PACNET, in the case of any Service for which there is a relevant Minimum Period of Subscription, Customer shall in addition be liable for the Charges up to the end of the relevant Minimum Period of Subscription if the same is unexpired and clauses 10.3 and 10.4 herein shall apply.
- 11.2 Upon the suspension referred to in clause 11.1, PACNET shall also be entitled to provide Customer two (2) weeks written notice of termination stating the relevant circumstance described in clause 11.1(a) or (b) as the basis for termination and that failure to make the relevant payment or submit the relevant forms to PACNET within two (2) weeks from such written notification will result in the Service or any other service or services provided by PACNET being deemed as terminated as from the date of suspension stipulated by PACNET and Customer shall be liable for all Charges incurred up to and including the date of such termination and in the case of any Service for which there is a relevant Minimum Period of Subscription, Customer shall in addition be liable for the Charges up to the end of the relevant Minimum Period of Subscription if the same is unexpired and clauses 10.3 and 10.4 herein shall apply. In addition, upon the request by Customer to reconnect the Service, PACNET reserves the right to impose on Customer a reactivation fee and such other fees as it deems appropriate provided that Customer is informed of such fees beforehand.
- 11.3 Notwithstanding the foregoing, upon subsequent payment by Customer of such sums as demanded by PACNET, upon the request of Customer, PACNET may if it deems feasible at its sole discretion and subject to such terms and conditions as it deems appropriate, reconnect the Service or any such other service or services, as the case may be, in which event this Agreement shall continue as if the same has not been terminated. PACNET

reserves the right to impose on Customer a reactivation fee and such other fees as it deems appropriate provided that Customer is informed of such fees beforehand.

**12. Cancellation Charge**

A cancellation charge at the prevailing cancellation fees prescribed by PACNET shall be payable if Customer cancels this Agreement after its acceptance by PACNET (including requesting for changes pursuant to clause 8 above) before the Commencement Date.

**13. Set up Fees**

Where the Commencement Date has been confirmed by PACNET and Customer requests for a change in the Commencement Date, Customer shall be liable to pay the fees, prescribed by PACNET, if any for the period between the originally confirmed commencement date to the new commencement date.

**14. Other charges**

14.1 In the event that PACNET's employees or agents are called upon to attend to any technical fault or provide any other form of servicing at Customer's premises, PACNET reserves the right to impose charges for any such service if the fault or any such servicing required is not directly attributable to any of PACNET's equipment or networks. PACNET's invoice shall, subject to clause 2.5, be conclusive evidence of Customer's request for such service.

14.2 In the event that Customer fails to pay any sum by its due date, PACNET reserves the right to charge Customer a reminder fee at such rate as PACNET may notify Customer from time to time.

14.3 All fees and charges payable are subject to Goods and Services Tax ("GST"). All taxes payable including GST shall be borne solely by Customer and shall accompany payment by Customer as set out in this Agreement.

**15. Disclaimer**

15.1 PACNET gives no warranty in respect of any software provided to Customer or the Service or any telecommunications services (including but not limited to leased lines) provided by any other telecommunications service provider through PACNET, and shall not be liable to Customer for any cost, claim, liability, expense, demand or damages whatsoever (including any loss of profits, lost savings or incidental or consequential damages) arising out of Customer's use of or inability to use such software or telecommunications services, even if PACNET or any of its authorized representatives has been advised of the possibility of such damages, or for any claim by any other person whatsoever.

15.2 Any condition or warranty which may be implied or incorporated within this Agreement by reason of statute or common law or otherwise (including warranties as to satisfactory quality and fitness for purpose) is hereby expressly excluded. While every care is taken by PACNET in the provision of the Service, PACNET shall not be liable for any loss of information howsoever caused whether as a result of any interruption, suspension, or termination of the Service or otherwise, or for the contents, security, accuracy or quality of information available, received or transmitted through the Service.

15.3 PACNET shall not be liable for any loss (whether direct, indirect, incidental, special, or consequential, including loss of revenue or profits arising as a

direct loss) or damages sustained by reason of Customer's use or inability to use the Service or any disclosure (inadvertent or otherwise) of any information concerning Customer's account and particulars or for any error, omission or inaccuracy with respect to any information so disclosed.

- 15.4 PACNET may from time to time through its personnel or agents, but is under no obligation to, provide Customer with walk-in or house call technical support. In the event PACNET provides any such technical support on Customer's premises, Customer shall ensure that such premises are safe and shall provide such facilities as PACNET, its personnel or its agents may reasonably request. Without prejudice to the foregoing, PACNET does not guarantee such technical support and shall not be liable for any loss or damages to equipment, software, information or whatsoever incurred, suffered or sustained in connection with such technical support.
- 15.5 PACNET makes no warranty regarding any goods, software or services purchased or obtained through the Service or any transactions entered into through the Service. Customer's correspondence with or participation in promotions of advertisers in conjunction with or pursuant to the Service, including the delivery of and the payment for goods, software and services, and any other terms, conditions, warranties or representations associated with such correspondence or promotions, are solely between Customer and such advertiser. Customer agrees that all dealings with such advertisers are on a caveat emptor (buyer beware) basis and PACNET makes no representation or warranty regarding any such advertiser. Customer agrees not to hold PACNET liable for any loss or damage of any sort incurred as a result of any such dealing or as the result of the presence of such advertisers on the Service.
- 15.6 No advice or information, whether oral or written, obtained by Customer from PACNET or through the Service shall create any warranty not expressly made herein.

## **16. Indemnity**

- 16.1 Customer shall indemnify and hold harmless PACNET at all times against all actions, proceedings, costs (including legal costs incurred by PACNET in defending such actions, claims or proceedings on a full indemnity basis), claims, expenses, demands, liabilities, losses and damages whatsoever including without limitation for defamation, infringement of intellectual property rights, death, bodily injury, property damage or pecuniary losses howsoever arising which PACNET may sustain, incur, suffer or pay arising out of, in connection with or pursuant to this Agreement, the use of Customer's account whether authorized or not or the use of the Service by Customer or any act or omission of Customer thereof.
- 16.2 Without prejudice to clause 16.1 above, Customer shall indemnify and hold harmless PACNET at all times against all actions, expenses, demands, claims, proceedings, costs (including legal costs incurred by PACNET in defending such actions, claims or proceedings), liability, losses and damages whatsoever which may be brought or commenced against PACNET by any person and/or which PACNET may sustain, incur or suffer, as the case may be, arising out of or in connection with or by reason of:
- (a) any default in payment of any Charges in relation to any services or facilities provided by any other telecommunications service provider that

PACNET has applied for on behalf of Customer; and/or

- (b) the use or operation (or the failure thereof) by Customer or any person in any way (whether with or without the authorization and/or permission of Customer) of any service and/or equipment provided by any other telecommunications service provider to Customer, whether or not in the course of PACNET's provision of the Service to Customer; and/or
- (c) any damage to any equipment operated or used, or any disruption or interference with the provision or operation of any telecommunications service, by any other telecommunications service provider arising from the installation and/or use of any equipment by Customer or any other person (whether with or without the authorization and/or permission of Customer).

16.3 Notwithstanding any provision wheresoever to the contrary, PACNET shall not be liable in any way to Customer whether in contract, tort (including negligence or breach of statutory duty) or other wise for any loss, damage or liability incurred or sustained by Customer caused by or as a result of:

- (a) any failure, delay, interruption to or disruption of any service provided by any other telecommunications service provider;
- (b) any failure, delay, interruption to or disruption in the transmission or reception of any data through any service provided by any other telecommunications service provider;
- (c) any defect, deficiency, breakdown or failure of any other telecommunications service providers' system, equipment or software, or the incompatibility of or unsuitability of any such system, equipment or software in relation to or in conjunction with any other system, software or equipment (whether used or operated by Customer or any other person);
- (d) any defect or deficiency in or the breakdown or failure of any equipment or system (whether or not maintained or operated by any person) howsoever arising;
- (e) any defect, deficiency or deterioration in the quality of any signal or data transmitted as part of any service provided by any other telecommunications service provider or PACNET; and/or
- (f) any loss, corruption or deletion of any data or information (whether belonging to, provided or stored by Customer or otherwise) transmitted to or stored in any system or equipment (whether or not maintained or operated by any other telecommunications service provider, PACNET, Customer or otherwise), howsoever caused or arising.

## **17. Confidentiality**

17.1 Customer shall not divulge or communicate to any person or use or exploit for any purpose whatsoever (other than that contemplated in this Agreement) any confidential information which may or may have come to his or its knowledge by reason of or in connection with this Agreement, and shall use all reasonable efforts to prevent his employees, officers, agents and consultants from so acting, except where the prior written consent of PACNET is obtained or where required to be disclosed pursuant to any applicable law or legal process issued by any court or the rules of any relevant regulatory body.

17.2 PACNET shall not divulge or communicate to any person (other than those who have been bound under a similar obligation of confidence as PACNET) any confidential information which may or may have come to its knowledge by

reason of or in connection with this Agreement, including but not limited to EUSI without the prior consent of Customer, except for the purposes of planning, provisioning and billing for the Service, managing bad debt and preventing fraud related to the Service, facilitating interconnection and interoperability between PACNET and other telecommunication service providers, or where required to be disclosed pursuant to any applicable law or legal process used by any court or the rules of any relevant regulatory body including the rules of any applicable stock exchange, providing assistance to law enforcement, judicial or other government agencies and/or complying with any regulatory requirement imposed by IDA authorizing the use of EUSI.

- 17.3 Save for the limited purposes set out in clause 17.2 above, PACNET will not use EUSI or provide the same to its affiliates or third parties for the development or marketing of other goods or services.
- 17.4 Customer may grant PACNET its written consent to use its EUSI for purposes other than those specified in clause 17.2 above. PACNET's use of the EUSI for such additional purposes shall be limited to the additional purposes as set out in Customer's written consent. Customer shall at anytime thereafter, be entitled to withdraw its consent by giving PACNET two weeks written notice of such intention. PACNET shall not impose any fee on Customer as a result of the said withdrawal of Customer's consent.
- 17.5 Customer acknowledges and agrees that PACNET may from time to time access his or its content and other parts of the Service as necessary to identify or resolve technical problems or to respond to service complaints. Customer acknowledges and agrees that certain technical processing of information is and may be required (a) to send and receive such data; (b) to perform planning and scheduling functions; (c) to conform to the technical requirements of the Service; or (d) to conform to other similar technical requirements.

## **18. Variation and Waivers**

- 18.1 PACNET reserves the right to amend the terms and conditions contained herein at any time upon written notice (in such form as may be determined by PACNET) to Customer. Customer agrees that notice via electronic mail to Customer's electronic mail address, by the posting on PACNET's website or by the posting of advertisements in major newspapers in Singapore shall be deemed to be sufficient written notice for the purposes of this clause 18.1. PACNET shall not revise and Customer shall not be bound by any rate, term and condition that varies from those specified herein, in the Application Form or Specific Terms, unless (a) prior written approval of Customer is obtained by PACNET; or (b) reasonable advance notice (in the manner described in this clause 18.1) had been provided to Customer. Customer's continued used of the Service shall constitute acceptance of such amendments or revisions.
- 18.2 Without limitation to the generality of the foregoing, any provision of this Agreement may be varied, supplemented or amended only if PACNET so agrees in writing. Any provision of this Agreement may be waived only if PACNET so agrees in writing provided that such waiver may be given subject to conditions thought fit by PACNET and shall be effective only in the instance and for the purpose for which it is given.
- 18.3 No failure on the part of PACNET to exercise, and no delay on its part in exercising, any right or remedy under this Agreement will operate as a waiver

thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).

**19. Assignment**

The rights and obligations under this Agreement shall not be capable of assignment by Customer without the prior written consent in writing of PACNET, but subject thereto, shall be binding on and inure for the benefit of his successors and permitted assigns.

**20. Force Majeure**

PACNET shall not have any liability for any delay or default in the performance of its obligations under this Agreement caused by circumstances beyond its control and without the fault or negligence of PACNET including but not restricted to acts of God, acts of the public, enemy, decrees or restraints by governmental authorities, strikes, war, riots insurrections, civil commotion and other causes of such nature. In any of the events mentioned above, PACNET shall for the duration of such event, be relieved of any such obligation under this Agreement as is affected by the said event.

**21. Governing Law and Jurisdiction**

This Agreement is governed by the laws of the Republic of Singapore and Customer and PACNET hereby submit to the exclusive jurisdiction of the Singapore courts.

**22. Notices**

22.1 Subject as otherwise provided in this Agreement, all notices, demands or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by prepaid registered post or by courier service or by facsimile to the address or facsimile number set out in the Application Form (or to such other address or facsimile number as Customer or PACNET may from time to time notify the other for the purposes of this Agreement).

22.2 Any notice, demand or communication shall be deemed to have been duly served:

- (a) if sent by facsimile transmission, on the day of dispatch subject to receipt of a confirmation of transmission; and
- (b) if sent by AR registered post or by courier service or delivered personally, on the day of receipt and in proving the same it shall be sufficient to show an acknowledgment of receipt issued by the post office in Singapore or an acknowledgment of receipt issued by the courier service company or the recipient as the case may be.

22.3 Communication from Customer may be effected by electronic mail save in respect of communications from Customer pursuant to clause(s) 2, 6 and 9 herein. PACNET may proceed to act in accordance with such communication upon receipt of the electronic mail and shall not be liable in any manner whatsoever for the same whether or not such communications via electronic mail were improper or unauthorized.

22.4 Subject to clause 2.5, a certificate, determination, notification, opinion or the

like by an officer of PACNET as to any matter relating to this Agreement shall be conclusive save for manifest error.

**23. Severability**

If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed to the fullest extent allowed by law so as to render the provision valid and enforceable, and if no such construction is possible, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect and the parties to this Agreement shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

**24. Legal Costs**

Without prejudice to any of the other provisions of this Agreement and to any other rights and remedies which PACNET may possess, Customer shall at all times be liable for and shall indemnify PACNET against all costs and expenses (including legal costs on a full indemnity basis) which PACNET may sustain, incur, suffer or pay in protecting or enforcing any rights under this Agreement (including but not limited to Customer's failure to pay Subscription Fees when due).

**25. Agency**

This Agreement creates no agency, partnership, joint venture or employment and neither Customer nor its agents have any authority to bind PACNET in any respect whatsoever.