

Terms and Conditions

Ximbo provides the hosting services subject to the following Terms and Conditions ("T&C"), which may be updated from time to time without any notice. By using and accessing the services provided by Ximbo, all subscribers accept and agree to be bound by the terms and conditions of this T&C, as well as the Acceptable Use Policy (the "AUP") and all supplementary terms (hereinafter collectively referred as "Agreement") are posted on Ximbo's web site <https://ximbo.com/en/about-us/terms-and-agreements.php>. Unless otherwise stated, defined terms used herein shall have the same meanings throughout the Agreement.

1. Definition

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

Agreement means collectively the T&C, the AUP of the Services, and all supplementary terms posted on Ximbo's web site: <https://ximbo.com/en/about-us/terms-and-agreements.php>;

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

2. Scope of Agreement

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

3. Commencement and Term

1. These T&C shall be for an initial term (the "Initial Term") as either requested by the Subscriber as indicated on the relevant service application form(s) to be approved by Ximbo, or as otherwise agreed whether orally, by email, or in writing between Ximbo and the Subscriber.
2. Subject to Clause 10.1, upon the expiry of the Initial Term or any subsequently extended term, these T&C shall automatically be extended subject to the sole and absolute discretion of Ximbo for another term of an equal length as that of the expiring term. For the avoidance of doubt, a term shall be automatically extended subject to the sole and absolute discretion of Ximbo upon its expiry pursuant to this Clause, if the Subscriber has not terminated the Agreement by giving not less than 30 days written notice to Ximbo prior to the expiry of that term.
3. For the avoidance of doubt, if these T&C are terminated by the Subscriber during the continuation of a term before its expiry for any reason other than pursuant to Clause 10.2, the Subscriber shall be liable to pay Ximbo the full amount of all Charges for the whole of that term.

4. Payment

1. In consideration for the provision of the Services, the Subscriber will pay to Ximbo the Charges notified by Ximbo to the Subscriber from time to time. The Subscriber will be solely responsible to pay any taxes and other charges such as migration and customization fee, professional services fee and out of pocket expenses arising in relation to its use of the Services.
2. Ximbo will issue invoices for the Charges to the Subscriber by electronic mail. All Charges are due and payable on presentation of the invoice therefor.
3. Late invoice payments to Ximbo are subjected to an interest charge, which is one-half percent (1.5%) per month. In the event of late payment(s) on your account, Ximbo, at its sole discretion and without waiving other rights it may have, may suspend, interrupt, or terminate the Services on your account.
4. The Subscriber shall provide and deliver to Ximbo proof of any payment made by the Subscriber either by Cash, Credit Card or Paypal to the Ximbo under the Agreement to the reasonable satisfaction of Ximbo. Unless and until the Subscriber shall have complied with this sub-clause in respect of the relevant payment, Ximbo shall be entitled to treat such payment yet due and outstanding.
5. No service fee shall be due to Ximbo in connection with any unpaid user account which is terminated and disabled within fourteen (14) days from the beginning of every service period.

5. Obligations of Ximbo

1. Ximbo will during the terms of these T&C provide the Services to the Subscriber in accordance with the terms and conditions of the Agreement. Ximbo will use reasonable endeavours to install and provide the Services within the timescales agreed (if any). However, such time scales are estimates only and Ximbo will in no event be liable for any costs, charges, losses or expenses of any kind arising out of delays in meeting installation, delivery or performance dates.
2. Ximbo will comply with the terms of its Personal Information Collection Statement ("PICS") and the provisions of the Personal Data (Privacy) Ordinance in dealing with the personal data of any of the Subscriber employees which it collects. The personal data of Subscriber will not be transmitted and disclosed to any third party (save for the purpose specified in this Agreement or any directly related purpose) unless the Subscriber has given his/her prior consent. Ximbo reserves the right to disclose the Subscriber's personally identifiable information as required by law and when Ximbo believes that disclosure is necessary to protect Ximbo rights and/or comply with a judicial proceeding, court order, or legal process. The Subscriber is entitled to make a data access or correction request concerning his/her own personal data (subject to prior confirmation of identity) kept with Ximbo. Alternatively, the Subscriber may request that such personal data at any time be edited or amended.

6. Obligations of the Subscriber

1. The Subscriber shall provide Ximbo for examination and verification proof of identity and constitution (whichever is applicable) and particulars of registered office or residential address (whichever is applicable) of the Subscriber as Ximbo shall request including but not limited to (whenever applicable) invoice(s) for utilities, identification card(s), and driver's licence(s), valid and current business registration certificate, latest annual return, certificate of incorporation, certificate of good standing (issued within one month), certificate of incumbency (issued within one month), memorandum and articles of association, and any other documents of identity and/or constitution of the Subscriber, and (where the Subscriber is not a natural person) of its authorized contact person for purpose of administration in respect of the Services, as Ximbo shall reasonably request, and shall deliver to Ximbo true and complete copies thereof upon request.
2. The Subscriber will allow Ximbo's personnel full and complete access to the premises of the Subscriber for the purposes of installing and providing the Services or any of them. The Subscriber shall at its own cost prepare the installation site and make all other necessary preparations in accordance with Ximbo's specifications.
3. The Subscriber will provide Ximbo with all necessary co-operation, information, equipment, data and support which Ximbo may reasonably require for the provision of the Services at such times as Ximbo requests.
4. The Subscriber warrants and undertakes that it will not make use of the Services in any manner which may infringe any Intellectual Property Rights or any applicable laws or regulations or which is otherwise in the sole and absolute opinion of Ximbo immoral, improper, inappropriate, or objectionable, or to copy, reproduce, distribute, publish, transmit, or otherwise deal with any unsolicited advertising or promotional material or any material which is obscene, indecent, seditious, offensive, defamatory, discriminatory, immoral, improper, inappropriate, or objectionable, or the publication or distribution of which is in breach of the confidence of Ximbo or any third party, or as a forum for viewing, posting up of messages or information, and discussion by the public or any section thereof (whether membership or registration is required or not and whether anonymous or otherwise) or forum of a similar nature, or allow the Services to be hacked or the computer hardware and software in connection with the Services to be modified or broke-in for any purpose outside of its original intended use or be reckless or ignorant as regards thereto.
5. The Subscriber's right to the use, upgrade or downgrade of Services is personal to the Subscriber. The Subscriber shall not licence or permit or purport to licence or permit any third party to the use, upgrade or downgrade of Services, whether or not for financial or other consideration. If the Subscriber designates more than one permitted user of the Services within its organisation, the Subscriber shall bring the provisions of the Agreement to the attention of each permitted user and shall procure that each permitted user complies with the provisions of the Agreement. The Subscriber will be responsible for the use, upgrade or downgrade of the Services by its permitted users and the indemnity given in Clause 13.1 shall extend to all such use, upgrade or downgrade of the Services.

6. The Subscriber will at all times when using the Services comply with all applicable laws.
7. The Subscriber will at its own expense maintain and keep all Equipment in good working order during the terms of the Agreement.
8. Subscriber should appoint three (3) persons from time to time (the "Administrators", the "Technical Contact" and the "Billing Contact"), (in case the Subscriber is an individual, the individual oneself would serve as the Administrators, the Technical Contact and the Billing Contact), whom the Subscriber will designate as the Subscriber's agents with the authority to perform certain administrative functions on the Services, including but not limited to
 - Technical Contact for receiving service passwords
 - Billing Contact for receiving invoices.
 - Administrators for receiving both service passwords and invoices, with the authority to request to change of any contact information.
 - It will be solely the Subscriber's responsibility to keep the contact information up to date in our database. Subscriber can always update their contact information anytime.
9. Subject to Clause 7.1, failed to provide any verification document as request will cause termination of service by Ximbo.

7. Suspension of Services

1. Ximbo may, without terminating the Agreement and without liability, refuse to provide at all or immediately suspend part or all of the Services until further notice if:
 - i. The Subscriber fails to comply with or observe Clause 6.1 or 6.4 hereof; or
 - ii. Ximbo would be permitted to terminate the Agreement under Clause 10.3 or 10.4. In such case, the Agreement will be terminated and the Subscriber will still be responsible for the costs, fees and/or other liabilities as stated in the Agreement; or
 - iii. Ximbo is obliged to comply with an order, instruction or request of government, regulatory body or other competent authority;
 - iv. Ximbo needs to maintain or upgrade the System. Ximbo will give the Subscriber the maximum period of notice practicable in the circumstances if it needs to suspend such Services for this reason; or
 - v. Ximbo needs to repair a fault in the System as a result of any unplanned outage, downtime or other reasons beyond Ximbo's control. The Subscriber acknowledges that Ximbo may not be able to give the Subscriber any notice regarding suspension of the Services.
2. If Ximbo refuses to provide or suspends such Services due to any event in Clauses 7.1.1 and 7.1.2:
 - i. this will not exclude Ximbo's right to terminate the Agreement later in respect of the same or any other event; and
 - ii. the Subscriber will, in addition to paying any overdue Charges, be liable to pay Ximbo a fee as may be notified by Ximbo from time to time to restore such Services; and

- iii. Ximbo shall not be responsible for or liable to the Subscriber whatsoever and howsoever in respect of any emails, data, or information lost, not stored, or not transmitted during the period of such refusal or suspension, and the Subscriber irrevocably and unconditionally waives and forgoes all claims it might have against Ximbo in respect thereof.

8. Intellectual Property

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

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

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

9. Payment Non-Refundable

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

10. Termination or Nullity

1. Ximbo may terminate the Agreement at any time by giving not less than 7 days written notice to the Subscriber.
2. Ximbo may at any time terminate the Agreement forthwith on or without notice to the Subscriber if the Subscriber is in breach of Clause 6.1 or 6.4 and/or any terms and conditions of the AUP.
3. Without prejudice to any other rights or remedies (whether under the Agreement or at law):
 - i. either party may terminate the Agreement immediately by serving written notice on the other if:
 1. The other party commits a breach of any material obligation under the Agreement and, in the case of a remediable breach (except failure to pay any Charges), fails to remedy the breach after receiving a written notice 14 days in advance to do so; or
 2. The other party becomes insolvent; or
 - ii. Ximbo may terminate the Agreement immediately with or without serving written notice on the Subscriber if the Subscriber fails to pay any Charges under the Agreement.

4. In this Clause, "insolvent" means the appointment of, or the application to a court for the appointment of, a liquidator, provisional liquidator, receiver or manager to that party, the entering into a scheme of arrangement or composition with or for the benefit of that party's creditors generally, any reorganisation, moratorium or other administration involving the creditors or any class of the creditors of that party, a resolution or proposed resolution to wind up that party, or that party becoming unable to pay its debts, or being deemed to have become unable to pay its debts, as and when they fall due within the meaning of Section 178 of the Companies Ordinance.
5. Ximbo shall not be responsible for or liable to the Subscriber whatsoever and howsoever in respect of any emails, data, or information deleted, removed, lost, not stored, or not transmitted as a result of the termination, and the Subscriber irrevocably and unconditionally authorizes and instructs Ximbo to delete and remove the same from any records or storage in respect of the Services And waives and forgoes all claims it might have against Ximbo in respect thereof.
6. The Subscriber warrants and represents to Ximbo that it is not an offshore company. If the Subscriber is found to be an offshore company, the Agreement or documents signed or entered into in relation to the Services shall be null and void and shall be of no effect whatsoever and shall be rescinded whether payment has been made by the Subscriber or accepted by Ximbo and whether the Services has been commenced or provided. In any event, Ximbo has the absolute discretion and authority to waive and remove the requirements and restrictions of this sub-clause.

11. Consequences of Termination

1. Termination of the Agreement will not relieve either party of any liability for breach of the Agreement or as may otherwise be established.
2. The provisions of Clauses 3.2, 11, 13 and 14 of these T&C will continue in force despite the termination of the Agreement.
3. Within not more than 30 days after termination of the Agreement for any reason, the Subscriber will give Ximbo full and free access to its premises to repossess any Equipment and software provided by Ximbo. The Subscriber will return Equipment to Ximbo in the same condition in which it was provided to the Subscriber (fair wear and tear excepted).

12. Limitation of Liability

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

2. Subject to Clause 12.1, Ximbo's liability in contract, tort or otherwise (including negligence) in connection with the Services, any software provided hereunder or any order, whether caused by failure to deliver, non-performance, defects, breach of warranty or otherwise, in respect of any one or more incidents, will not exceed the total Charges received by Ximbo from the Subscriber in the month in which the incident occurs.
3. Subject to the express terms of the Agreement Ximbo will not be liable to the Subscriber for any indirect or consequential loss, whether arising from negligence, breach of contract or otherwise, including without limitation for any loss of revenue, profits, business, contracts or data, or for any anticipated savings, business interruption or downtime.
4. The Users understand, acknowledge and agree that if Ximbo takes any corrective action under the Agreement because of an action of User or the agents of User, that corrective action may adversely affect other Users of User or other agents of the Users, and Users agree that Ximbo shall have no liability to Users due to such corrective action.

13. Indemnities

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

14. Warranties

No warranties are given by Ximbo in relation to the Services or the use thereof by the Subscriber and Ximbo gives no guarantee of end to end bandwidth capacity or availability on the Internet. To the extent permitted by law, Ximbo excludes all implied warranties including, without limitation, as to quality and fitness for purpose of the Services.

15. Assignment

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

16. Notices

Any notice, invoice or other document which may be given by either party under the Agreement will be deemed to have been duly given if left at or sent by electronic mail to the other party's registered electronic mail address notified in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent.

17. Waiver

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

18. Severability

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

19. Amendments

Ximbo may update, amend, modify or supplement the terms and conditions of this Agreement from time to time without notice. The most current version of the Agreement can be found at Ximbo Website <https://www.ximbo.com>

20. Entire Agreement

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

21. Governing Law and Jurisdiction

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

22. Liability to Information Provided by Subscriber

Subscriber has its sole responsibility on managing the content / value of fields under Customer Control Panel (CCP), which is editable by administrator. Ximbo shall have no liability to any update, changes, delete, edit or any other action performed in the CCP by the Subscriber and the administrator.