



## **End User Licence Agreement**

### **Decho Technology International Licence Agreement**

This agreement (the "Agreement") is a legal agreement between you, either an individual or a single legal entity ("You" or "you"), and Decho Technology International Limited, an Irish company with its registered address at 70 Sir Rogerson's Quay, Dublin 2, Ireland ("Decho"). This Agreement governs your use of the MozyPro Backup Client software distributed with this Agreement, including any updates that may be provided to you and any accompanying written documentation (the "Software") in connection with Pacnet DataVault online storage service ("Service") to be provided to you by Pacnet Services Asia Pacific (HK) Limited or its affiliates (hereinafter referred to as "Pacnet").

Although Decho may, in its sole discretion, update and maintain the Software, it is under no obligation to do so other than as expressly provided in this Agreement.

### **PRIVACY AND COMMUNICATIONS**

By entering into this Agreement, you agree to Decho's collection, use and disclosure of your Personal Data in accordance with the Decho Privacy Policy, which is incorporated into this Agreement by reference.

### **ACCOUNTS, PASSWORDS, AND SECURITY**

You must be a registered user to access the Service. You are responsible for keeping your password secure. You will be solely responsible and liable for any activity that occurs under your user name. If you lose your password or the encryption key for your account, you may not be able to access your data. You must notify Pacnet immediately of any unauthorized use of your account or any other breach of security regarding the Service or Pacnet's website that comes to your attention. If Pacnet concludes that there has been or is likely to be a breach of username or password security Pacnet may (at its sole discretion):

- (a) suspend your username(s) and passwords; and
- (b) require you to change any or all of the username(s) and/or password(s) you use in connection with the Service.

### **ORDERING PROCESS**

When you submit a sales order form to Pacnet, this is an offer by you to pay Pacnet to provide the Service to you. Your offer is subject to Pacnet's acceptance. Pacnet's acceptance of your offer and the contract between you and Pacnet for the provision of the Service will be formed only when the applicable initial payment for the Service has been successfully processed by Pacnet. You agree that as soon as your payment has been successfully processed by Pacnet we will commence making the Service available to you.

### **ACCEPTABLE USE AND CONDUCT**

You are solely responsible for your conduct and the consequences of any failure by you to comply with the terms and conditions of this Agreement.



The Software are made available to you only for your personal use, which use must be in compliance with all applicable laws, rules and regulations and must not infringe or violate third party rights.

Without prejudice to the generality of the above, you may not:

- (a) use the Software to upload, store or transmit files that:
  - (i) infringe the intellectual property or other rights of third parties (for example, illegal copies of music tracks, TV programming and / or movies);
  - (ii) contain any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, racially, ethnically or otherwise objectionable material of any kind;
  - (iii) contain viruses, "Trojan Horses", worms, cancelbots, corrupted files or other such similarly destructive features;
- (b) otherwise in any way damage, disable or impair the operation of the Software, or attempt to do any of the same
- (c) gain or attempt to gain unauthorized access to the Software, or to networks connected to it, or to content stored or delivered through it, by any means, including by hacking, spoofing or seeking to circumvent or defeat any firewalls or other technological or other protections or security measures;
- (d) make commercial use of the Software, including but not limited to selling or distributing the Software to any third party.

Any unauthorized use of any Decho computer system is a violation of this Agreement and applicable laws. Such violations may subject the unauthorized user and his or her agents to civil and criminal penalties.

#### **CONSENT TO COLLECT PERSONAL DATA, NON-PERSONALLY IDENTIFIABLE STATISTICAL INFORMATION AND PERFORMANCE METRICS; USE AND DELETION OF DATA**

When you use the Software we may request and/or you may provide certain personal data.

Pacnet and Decho may also collect certain technical and statistical non-personally identifiable information that resides on your computer, including, without limitation, statistics relating to how often backups are started and completed, performance metrics relating to the Software, Services and configuration settings. For the purposes of evaluating or improving the performance and usability of the Software and Service, as well as providing reports and feedback on the usage of such Software and Services, Pacnet and Decho shall have access to the aggregated data collected by the Software or Services.

The personal data and other information sent to/collected by Decho will be used by Decho in accordance with the Decho Privacy Policy.

When your account is terminated for any reason or you delete a particular device or machine associated with your account, you agree that we may delete any data that you have stored, which is associated with the relevant account and/or machine.

#### **CHANGES TO THE TERMS AND CONDITIONS**



Decho reserves the right at any time to modify this Agreement in its sole discretion, without liability to you. This Agreement, as amended, will be effective upon acceptance of registration for new users and effective for all existing users 15 days after the posting of any amended terms on the <http://www.pacnet.com/enterprise/solution/datavault> (the "Website"). You agree to be bound by this Agreement, as modified. Please review the most current version of this Agreement from time to time, posted on the Website, so that you will be apprised of any changes.

## **USE OF SOFTWARE**

Subject to the terms and conditions of this Agreement, Decho grants you a non-exclusive, non-transferable, non-sublicensable licence for the term of this Agreement to install and execute one (1) copy of the Software (in executable code form only) only on a single computer and only for the purpose of accessing and using the Service. Certain third party code may be provided with the Software. The third-party licence terms accompanying such code, and not the terms of this Section, will govern your use of such code.

The Software and its structure, organization, source code, and documentation contain valuable trade secrets of Decho and its licensors, and accordingly you agree not to (and agree not to allow third parties to) (1) sublicense, lease, rent, loan, transfer, or distribute the Software or any derivative thereof to any third party, (2) modify, adapt, translate, or prepare derivative works from the Software, (3) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software except that you may decompile the Software only to the extent permitted by law where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Software or with another program and such information is not readily available from Decho or elsewhere, (4) extract portions of the Software's files for use in other applications, or (5) remove, obscure, or alter Decho's or any third party's trademarks or copyright or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software.

## **INTELLECTUAL PROPERTY**

You acknowledge that Decho or third parties own all right, title and interest in and to the Software, portions thereof, or software or content provided through or in conjunction with the Software, including without limitation all intellectual property rights. Except for the licence granted in this Section, all rights in and to the Software is reserved, and no implied licenses are granted by Decho.

If you have comments on the Software or ideas on how to improve them, please visit <http://mozy.com/feedback.html>. Please note that by doing so, you also grant Decho a perpetual, royalty-free, irrevocable, transferable licence, with right of sublicense, to use and incorporate your ideas or comments into the Software (or third party software, content, or services), and to otherwise exploit your ideas and comments, in each case without compensation.

## **TERM AND TERMINATION**

This Agreement becomes effective when Pacnet has successfully processed your payment for the Service and you have accepted the terms of this Agreement.

This Agreement remains in effect until your account is terminated.

Decho may terminate your account after e-mail notification if –

- (a) Pacnet informs Decho that the Service with Customer has been terminated;



- (b) you commit a material breach of this Agreement and does not remedy the breach within thirty days of us notifying you of such breach

You agree that, upon such termination, you will destroy and permanently erase all copies of the Software and that your access rights to the Service will immediately terminate.

The terms of the Sections entitled Consent To Collect Personal Data, Non-Personally Identifiable Statistical Information and Performance Metrics; Use and Deletion of Data, Intellectual Property, Warranties, Indemnity and Disclaimers, Limitation of Liability, and Miscellaneous will survive expiration or termination.

## **WARRANTIES, INDEMNITY AND DISCLAIMERS**

Nothing in these terms and conditions excludes, restricts or affects your statutory rights.

You specifically acknowledge and accept that Decho does not guarantee the prevention or detection of any unauthorized attempts to access your data through the Service, the Website and/or our other systems and services.

Decho also cannot be held responsible for any loss or corruption of data or any unauthorized access of such data that takes place over third party systems and services used by you to transmit the data to or retrieve the data from Decho. It is also entirely your responsibility to protect your computer from computer viruses by installing and updating adequate anti-virus software.

Without prejudice to any other provision of this agreement, if a failure with the Software materially or permanently prevents you from accessing or retrieving any data that you have stored through the Service, then Decho shall, at our option either (a) resolve the issue or (b) Pacnet will refund to you that proportion of the price you paid for the Service which is reasonably attributable to the data in question, taking into account its size relative to the total volume of data stored by you during the term of this agreement. To the maximum extent permitted under applicable law, such resolution or refund is Pacnet and Decho's entire liability and your exclusive remedy relating to any such failure.

TO THE FULLEST EXTENT PERMITTED BY LAW, DECHO AND ANY THIRD PARTY SOFTWARE SUPPLIERS, EXCLUDE ALL OTHER EXPRESS OR IMPLIED TERMS AND CONDITIONS, CONDITIONS, WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER WITH REGARD THE SOFTWARE INCLUDING WITHOUT LIMITATION THOSE AS TO SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND ANY WARRANTIES OR OTHER TERMS REGARDING THE AVAILABILITY, SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE.

DECHO SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM THE ILLEGAL, INCORRECT OR INAPPROPRIATE USE OF THE SOFTWARE BY YOU OR ANYONE ELSE USING YOUR ACCOUNT.

DECHO MAY REQUIRE YOU TO REIMBURSE US FOR ANY REASONABLE AND FORESEEABLE LOSSES, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITY THAT DECHO INCURS AS A DIRECT RESULT OF THE MISUSE OF THE SOFTWARE EITHER BY YOU OR BY SOMEONE USING YOUR ACCOUNT. FOR THE PURPOSE OF THIS PARAGRAPH, "MISUSE" SHALL BE CONSTRUED AS INCLUDING (I) ANY USE OF THE SOFTWARE THAT IS IN BREACH OF THIS AGREEMENT (INCLUDING THE PRIVACY POLICY); AND/OR (II) ANY USE OF THE SOFTWARE IN CONNECTION WITH WHICH DECHO IS REQUIRED TO DEFEND ITS OWN INTERESTS BEFORE A COURT,



GOVERNMENT AGENCY, INDUSTRY REGULATOR, SELF-REGULATORY BODY OR SIMILAR MEMBERSHIP ORGANIZATION, OR DISPUTE RESOLUTION BODY AND/OR INCURS ANY LOSSES, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITY IN CONNECTION WITH ANY THREATENED OR ACTUAL CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDINGS.

#### **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL DECHO, OR ITS SUPPLIERS, PACNET OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SOFTWARE, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF DECHO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

WITHOUT LIMITING THE FOREGOING, SAVE IN THE CASE OF DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, OR WHERE WE HAVE ACTED FRAUDULENTLY, THE TOTAL AGGREGATE LIABILITY OF DECHO, AND ITS SUPPLIERS, PACNET AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT, IF ANY, PAID BY YOU TO PACNET FOR THE SOFTWARE.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SOFTWARE, FROM INABILITY TO USE THE SOFTWARE, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SOFTWARE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

THE SOFTWARE ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND YOU AGREE THAT DECHO WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE.

#### **MISCELLANEOUS PROVISIONS**

Your ability to use the Software will depend on your geographical location, and whether you have appropriate technical equipment, including connectivity and bandwidth, available to you to download software, as well as other factors. We recommend that you check, and you are responsible for checking, that you have all necessary equipment, internet connectivity and systems properly to download the Software.

You acknowledge and agree that the Software which is the subject of this Agreement, may be controlled for export purposes. You agree to comply with all United States export laws and regulations. You assume sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation. If you are located in a country subject to embargo by the United States government, you are not entitled to use the Software.

This agreement will be governed by and construed in accordance with the laws of England, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.



The failure of Decho to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

This Agreement, which incorporates the [Decho Privacy Policy](#), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Decho.

All disputes arising out of this Agreement will be subject to English law and the parties agree and submit to the personal and exclusive jurisdiction and venue of the English courts, except that nothing will prohibit Decho from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights.

You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Decho. Decho may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning.

#### **Contacting Decho**

Users with questions about this Agreement (including the Privacy Policy) may contact Decho via email: [eula@decho.com](mailto:eula@decho.com).