

## **Panchain Terms of Service**

Last updated: January 1, 2019

### **1. Your Use of Our Services**

Your use of any application, software, services, websites, and other related services provided by Panchain, Inc., its subsidiaries, and affiliates (“Us” and “We”) or any third party designated by Us (collectively, the “Services”) is subject to the terms set out below, including but not limited to, Our Privacy Policy located at <http://passfolioapp.com/privacy.pdf>, which is hereby incorporated by reference (collectively, the “Terms”).

These Terms and any of the documents referred to in the Terms create a legally binding agreement between you and Us. Please read them carefully.

### **2. Accepting these Terms**

In order to use the Services, you must first agree to the Terms. You may not use the Services if you do not accept the Terms. If you do not accept the Terms, you will not be able to access the Services.

### **3. Changes to these Terms**

We reserve the right to modify these Terms from time to time. If you continue to use the Services after such modification, you will be deemed to have read, understood, and unconditionally agreed to such changes.

### **4. Privacy Policy**

In order to make the Services available to you and process the transactions contemplated by these Terms, We will have to collect information and/or personal data from you. The information and/or data collected will be used in accordance with our Privacy Policy. We may update the Privacy Policy from time to time, so please periodically review the Privacy Policy.

### **5. Account Terms**

#### **A. Registration for Services**

In order to access certain Services, you may be required to provide information about yourself as part of the registration process for the Services or as part of your continued use of the Services.

You must provide a valid email address and password to create your account with Us (“Account”). You understand that you are responsible for maintaining the confidentiality of your password and other Account information. Accordingly, you agree that you will be solely responsible to Us for all activities that occur under your Account, and We are not

responsible for problems with your Account due to misuse of your email address and/or password. If you become aware of, or suspect, any unauthorized use of your email address, password, or Account, you agree to notify Us immediately at [hello@panchaininc.com](mailto:hello@panchaininc.com).

## B. Account Requirements

There are several requirements related to creation and maintenance of an Account:

- You must be a human to create an Account. Accounts registered by “bots” or other automated methods are not permitted.
- One person or legal entity may maintain no more than one Account.
- In order to open an Account, you must be age 13 or older. We do not target our Services to children under 13, and We do not knowingly permit any individual under 13 years of age to use our Services. If We learn of any user under 13, We will terminate the user’s Account immediately. If you are a resident of a country outside the United States, your country’s minimum age may be older. In such a case, you are responsible for complying with your country’s laws.
- You acknowledge that We will use the email address you provide as the primary method of communication.
- A breach or violation of any term in the Terms, as determined in Our sole discretion, will result in an immediate termination of your Account and your access to the Services.

## 6. Third-Party Services

In addition to these Terms, you also agree to be bound by the additional service-specific terms applicable to applications, websites, or services provided by Our partners or other third parties.

From time to time, We may provide you with links to third party websites or services that We do not own or control. Your use of the Services may also include the use of applications that are developed or owned by a third party. Your use of such third party applications, websites, and services is governed by that party’s terms and conditions or privacy policies. It is your responsibility to read the terms and conditions and privacy policy of any third party application, website, or service that you visit or use.

## 7. Acceptable Use

While using the Services, you must follow the Acceptable Use Policy (“AUP”) described in this section. “User-Generated Content” includes, without limitation, text, data, articles, images, photographs, graphics, software, applications, designs, features, and other

content uploaded, collected, generated, stored, displayed, distributed, transmitted, or exhibited in connection with your Account.

We may, at any time and without notice, remove any User-Generated Content, and suspend or terminate your Account or your access to the Services if you engage in activities that violate the letter or spirit of this AUP.

We have the right, but not the obligation, to monitor or investigate any User-Generated Content and use of the Services at any time for compliance with this AUP. Our determination of whether a violation of this AUP has occurred will be final and binding, and any action taken with respect to enforcing this AUP, including taking no action at all, will be at our sole discretion.

#### A. Compliance with Laws and Regulations

Your use of the Services, including the posting or uploading of User-Generated Content, must not violate any applicable laws, including copyright or trademark laws, export control laws, or other laws in your jurisdiction. You are responsible for making sure that your use of the Services is in compliance with laws and any applicable regulations.

#### B. Content Restrictions

You agree that you will not, under any circumstances, post, host, or transmit any User-Generated Content that:

- is unlawful or promotes unlawful activities;
- is objectionable, offensive, deceptive, or harmful;
- is or contains sexually obscene content;
- is libelous, defamatory, or fraudulent;
- is discriminatory or abusive toward any individual or group;
- transmit malware or host phishing pages. You may not perform activities or upload or distribute User-Generated Content that harms or disrupts the operation of the Services or the infrastructure of Us or others, including Our third party providers.
- implies or promotes support or funding of, or membership in, a terrorist organization;
- contains personally identifiable information, sensitive personal information, or confidential information (e.g., addresses, phone number, email addresses, Social Security number, and credit card numbers) unless you have consent from the

person to whom the information belongs or who is authorized to provide such consent;

- contains or instills any active malware or exploits, or uses our platform for exploit delivery (such as part of a command and control system); or
- infringes or violates any proprietary right of any party, including patent, trademark, trade secret, copyright, right of privacy, right of publicity, or other rights.

### C. Conduct Restrictions

While using the Services, you agree that you will not under any circumstances:

- harass, abuse, threaten, or incite violence towards any individual or group;
- use the Services in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Services;
- use the Services in any manner that could damage, disable, overburden, or impair the functioning of the Services;
- use our servers for any form of excessive automated bulk activity (e.g., spamming) or relay any other form of unsolicited advertising or solicitation through our servers;
- impersonate or post on behalf of any person or entity or otherwise misrepresent your affiliation with a person or entity;
- create an Account or post any content if you are not over 13 years or age;
- circumvent or attempt to circumvent any filtering, security measures, rate limits, or other features designed to protect the Services, users of the Services, or third parties; and
- attempt to disrupt or tamper with Our servers in ways that could harm Our website or Services, to place undue burden on Our servers through automated means, or to access the Services in ways that exceed your authorization.

### D. Services Usage Limits

You agree not to reproduce, duplicate, copy, sell, resell, or exploit any portion of the Services, use of the Services, or access to the Services without Our express written permission.

### E. Privacy

Misuse of the personal information of Services users is prohibited.

Any person, entity, or service collecting data from the Services must comply with Our Privacy Policy, particularly in regard to the collection of users' personal information. If you collect any user's personal information from the Services, you agree that you will only use the personal information you gather for the purpose of which our user has authorized it. You agree that you will reasonably secure any personal information you have gathered from the Services, and you will promptly respond to complaints, removal request, and "do not contact" requests from Our or Services users.

## **8. Intellectual Property and User-Generated Content**

"Your Content" means User-Generated Content that you create or own.

### **A. Submission**

You may upload User-Generated Content while using the Services. You must submit to Us each User-Generated Content that you wish to upload to the Services. All copies of the User-Generated Content you submit will be retained (or destroyed) by Us and will not be returned. You are responsible for retaining a back-up copy of your User-Generated Content.

### **B. Ownership of User-Generated Content**

We do not claim any intellectual property rights over the User-Generated Content that you upload to the Services. You retain ownership of and responsibility for Your Content. If you are posting anything to the Services that you did not create yourself or do not own the rights to, you agree (i) that you are responsible for any content you post; (ii) that you will only submit content that you have the right to post; and (iii) that you will fully comply with any third party licenses related to content you post.

### **C. Responsibility for User-Generated Content**

You are solely responsible for the content of, and for any harm resulting from, any User-Generated Content that you post, upload, link to, or otherwise make available via the Services, regardless of the form of the that content. We are not responsible for any public display or misuse of Your Content.

### **D. Distribution**

We have no obligation to distribute any User-Generated Content you submit, and We will not distribute any User-Generated Content unless and until the User-Generated Content has been approved by Us. If We choose to distribute your approved User-Generated Content through the Services, We will do so in accordance with these Terms.

## **E. Placement of User-Generated Content**

We reserve the right, in Our sole discretion, to make all decisions regarding placement or promotion for User-Generated Content.

## **F. Our Rights to Content**

You acknowledge and agree that Our (or Our licensors) own all legal right, title, and interest in and to the Services, including any intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Unless you have agreed otherwise in writing with Us, nothing in these Terms gives you a right to use any of Our trade names, trademarks, service marks, logos, domain names, and/or other distinctive brand features.

Unless you have been expressly authorized to do so in writing by Us, you agree that in using the Services, you will not use any trademark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names, or logos.

## **G. Removal**

We reserve the right to remove any User-Generated Content from the Services for any reason. Such reasons may include, without limitation, (i) your breach of these Terms; (ii) your express termination of the agreement formed by these Terms or of the license grants associated with Your Content; (iii) an assertion or claim that Your Content infringes the intellectual property rights of a third party or otherwise contains illegal content; or (iv) user complaint(s) about the content or quality of Your Content.

## **H. Moral Rights**

You retain all moral rights to Your Content that you upload, publish, or submit to any part of the Services, including the rights of integrity and attribution. However, you waive these rights and agree not to assert them against Us, to enable Us to reasonably exercise the rights granted in Section 9(A), but not otherwise.

To the extent this agreement is not enforceable by applicable law, you grant Us the rights We need to use Your Content without attribution and to make reasonable adaptations of Your Content as necessary to render the Services and provide the Services.

## **9. License Grant**

### **A. License Grant to Us**

We need the legal right to host, publish, and share Your Content. You grant Us and our legal successors an irrevocable, unlimited, worldwide, royalty-free and non-exclusive license to store, parse, adapt, modify, and display Your Content, and make incidental copies as necessary to render the Services and provide the Services. This includes the

right to (i) copy Your Content to our database and make backups; (ii) show Your Content to you and other users; (iii) parse Your Content into a search index or otherwise analyze it on our servers; (iv) share Your Content with other users; and (v) perform Your Content.

This license does not Grant Us the right to sell Your Content or otherwise distribute or use it outside of our provision of the Services.

#### B. License Grant to Other Users

Any User-Generated Content that you post publicly may be viewed by others. You grant each user of the Services a nonexclusive, worldwide license to use, display, and perform Your Content through the Services. If you are uploading content that you did not create or own, you are responsible for ensuring that the content you upload is licensed under terms that grant these permissions to other Services users.

#### 10. Copyright Infringement and DMCA Policy

We support the protection of intellectual property and asks users of the Services to do the same. If you believe that content on the Services violates your copyright, please submit a “Takedown Notice” at [dmca@panchaininc.com](mailto:dmca@panchaininc.com). There may be legal consequences for sending a false or frivolous Takedown Notice. Before sending a takedown request, you must consider legal uses, such as fair use and licensed uses.

It is Our policy, in appropriate circumstances and in Our sole discretion, to disable and/or terminate the Accounts of users who repeatedly infringe or are repeatedly charged with infringing upon the copyrights or other intellectual property rights of Us and/or others.

#### 11. Payments, Refunds, Etc.

##### A. Payments and Refunds

Refunds for payments to Us are granted at Our sole discretion.

#### 12. Disclaimer of Warranties

Your use of the Services is at your sole risk. We provide the Services “as is” and “as available,” without warranty of any kind. We expressly disclaim all warranties, whether express, implied, or statutory, regarding Our website and the Services including, without limitation, any warranty of merchantability, fitness for a particular purpose, title, security, accuracy, and non-infringement.

We do not warrant (i) that the Services will meet your requirements; (ii) that the Services will be uninterrupted, timely, secure, or error-free; (iii) that the information provided through the Services is accurate, reliable or correct; (iv) that any defects or errors will be corrected; (v) that the Services will be available at any particular time or location; (vi) that the Services are free of viruses or other harmful components; (vii) that your use of

the Services will not result in any loss of assets by you. You assume full responsibility and risk of loss resulting from your downloading and/or use of files, information, content, or other material obtained from the Services.

### **13. Limitation of Liability**

You understand and agree that We will not be liable to you or any third party for any direct, indirect, incidental, special, consequential, or exemplary damages resulting from:

- the use, disclosure, or display of your User-Generated Content;
- your use or inability to use the Services;
- any modification, suspension, or discontinuance of the Services;
- the Services generally or the software or systems that make the Services available;
- unauthorized access to or alterations of your transmissions or data;
- statements or conduct of any third party on the Services;
- any other user interactions that you input or receive through your use of the Services; or
- any other matter relating to the Services.

You agree to indemnify and hold Us and (as applicable) our parent, subsidiaries, affiliates, partners, officers, directors, agents, and employees (collectively, the "Indemnified Parties") harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Indemnified Parties arising out of or relating to (1) an assertion that Your User-Generated Content or the use thereof, may infringe any copyright, trademark, or other intellectual property rights of any individual or entity, or are a misappropriation of any individual or entity's trade secret, or contain any libelous, defamatory, disparaging, pornographic, or obscene materials; (2) Your violation of any rights of a third party; (3) any breach by You of your obligations under these Terms; (4) Your unlawful and/or unauthorized use of, or activities in connection with the Services; (5) Your violation of any applicable law; (6) Your access to, use of, or inability to use the Services; and (7) any negligent acts, omissions or willful misconduct by You. The foregoing indemnities shall survive expiration or termination of these Terms.

TO THE EXTENT NOT PROHIBITED BY LAW, OUR TOTAL LIABILITY TO YOU FOR ANY BREACH OF ANY TERM IN THE TERMS, NEGLIGENCE, OR OTHER DEFAULT SHALL NOT EXCEED THE AMOUNT OF \$100. THIS LIMITATION WILL APPLY EVEN IF ANY REMEDY SPECIFIED IN THESE TERMS IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## 14. Cancellation and Termination

### A. Account Cancellation

It is your responsibility to properly cancel your Account. You can cancel your Account at any time by emailing [hello@panchaininc.com](mailto:hello@panchaininc.com) and then following the specific instructions provided to you in Our response.

### B. Upon Cancellation

We will retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements. However, barring legal requirements, We will delete your Account and Your Content upon termination of the Services by either party (though some information may remain in encrypted backups). This information cannot be recovered once your Account is cancelled.

### C. Our Right to Terminate

We reserve the right to suspend or terminate your access to all or any part of the Services for any reason, with or without notice, at any time. We also reserve the right to refuse service to anyone for any reason at any time.

## 15. Miscellaneous

### A. Governing Law

The Terms, and your relationship with Us under the Terms, shall be governed by the laws of the State of California, without regard to conflict of law provisions. You and Us agree to submit to the exclusive jurisdiction and venue of the courts located in the County of San Francisco, California.

### B. Complete Agreement

The Terms and the documents referred to in these Terms constitute the whole legal agreement between you and Us and govern your use of the Services (but excluding any services which We may provide to you under a separate written agreement), and completely replace any prior agreements between you and Us in relation to the Services.

### C. Notices

You agree that We may provide you with notices, including those regarding changes to the Terms, by email or postings on Our website or Services.

### D. Non-Assignability

You may not transfer, assign, charge, or otherwise dispose of these Terms, or any of your rights or obligations arising under them, without our prior written consent. Any unauthorized assignment and delegation by you is void.

We may transfer, assign, charge, sub-contract or otherwise dispose of these Terms, or any of our rights or obligations arising under it, at any time during its term.

#### E. Section Headings and Summaries

Throughout these Terms, each section includes titles. These section titles are not legally binding.

#### F. Severability, No Waiver, and Survival

You agree that if We do not exercise or enforce any legal right or remedy which is contained in the Terms (or which We have the benefit of under any applicable law), this will not be taken to be a formal waiver of Our rights and that those rights or remedies will still be available to Us.

If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid or unenforceable, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.

#### G. Amendments

These terms may only be modified by a written amendment signed by an authorized representative of Us.

#### H. Questions

Questions about the Terms should be sent to [hello@panchaininc.com](mailto:hello@panchaininc.com).