



Annexure A  
General Terms & Conditions

# 1. The Scope

## 1.1 Application of general terms and conditions

These general terms and conditions shall apply to all software and services offered or supplied by the Supplier to the Customer and shall include the software service delivered via data network. The services may also include other software services. The content of the services are as set out and described in detail in the Order Confirmation, to which these general terms and conditions are annexed.

## 1.2 Definitions

*“Agreement”* means the terms of the Order Confirmation and these General terms and conditions, read together.

*“Customer Data”* means information or material transferred by the Customer to the Software or information or material otherwise provided or made available to the Supplier for the Customer and for purposes of the Software Service or other information or material specified as Customer data by the parties.

*“Software”* means the Supplier’s software program/s provided to the Customer through the Software Service.

*“Software Service”* means the service delivered via data network or other similar service for the provision of access to and the right to use the Software including tasks related to the training of the Customer’s personnel and the deployment and maintenance of the Software to the extent set out in this Agreement or alternatively agreed in writing.

*Invoicing Period* means the period for which the Customer is entitled to use the Software Service by payment of the amount of the relevant invoice.

*“Customer”* means both the consumer Customer and corporate Customer.

# 2. Coming into effect and transfer of the agreement

The Agreement comes into effect when the parties have both signed the Order Confirmation or the Customer has otherwise begun to use the Supplier’s Software Service.

# 3. Delivery, production and use of the Service

The Supplier shall be liable to deliver the Software Service on the agreed time or within a reasonable time from signature of the Order Confirmation, if the delivery time has not been agreed.

The Customer shall ensure that the Supplier is given the required access to the Customer’s Data systems and the Customer co-operates fully in the delivery process of the Software Service.

The Customer shall be responsible for acquiring and maintaining the functional status of the hardware, connections and software which the Customer needs in order to use the Software Service. The Customer shall be responsible for the protection of Customer’s Data system,

telecommunication and other comparable costs related to use of the Software Service. The Customer shall be responsible for preparing the hardware, connections, software and data systems to meet the operating environment specifications established (required) by the Supplier, and for ensuring that the Software Service fulfills the Customer's intended purpose.

The Supplier undertakes to perform the tasks for which it is responsible in conformity with the terms of the Agreement, with due care and with the professional skills required for the tasks.

The Supplier shall deliver the Software Service in conformity with the Agreement in the manner it considers best. An instruction manual and related updates, in connection with the Software Service, shall be on the Customer's view in network.

The Supplier has the right to alter or modify the service techniques and factors relating to the use of the Software Service and thereby update any data systems and related software, which is utilized.

The Supplier shall grant the Customer the right of use of the Software Services in conformity with the Agreement. The Customer shall use the Software Service and equipment, software, documents and other material delivered by right of use in connection with the Software in accordance with the Supplier's instructions and only for the agreed purpose.

The Supplier shall have the right to suspend the delivery of the Software Service due to installation, change or maintenance work of a general data network or due to severe data security risk to the Software or if required by law or regulation by authorities. If the Supplier suspends the Software Service, it shall inform the Customer of the suspension and the duration of the suspension in advance or, if this is not reasonably possible, without delay after the Supplier has learned of such matter.

The Supplier shall have the right to deny the Customer access to the Software Service without consulting the Customer, if the Supplier reasonably suspects that the Customer loads or uses the Software in such a manner as to jeopardize the delivery of the Software Service to other users. The Supplier shall without undue delay inform the Customer of the reasons for such denial of access and restrict the interruption to as short a period as possible.

The Supplier shall not be responsible for the contents or functionality of the services, information on any data network or other information received, as well as any disturbances thereof. The Supplier shall not be responsible for disturbances from any data network or elsewhere relating to the Customer or data system or unauthorized use or its trial or other comparable or corresponding factors. The Supplier shall not be responsible for third parties' faults or errors.

The Customer shall be solely responsible for make back-up copies of the data and e-mails saved through the Software Service. The Supplier shall also make back-up copies thereof, but it shall not be responsible in case of lost data due to e.g. damage in hardware, natural catastrophe or due to a factor beyond the Suppliers influence or any force majeure situation.

The Supplier shall have the right to disclose the Customer Data only within the limits permitted and required by any valid legislation.

#### 4. Compensation for expenses and damages

The Supplier shall only be responsible for damages proved to be due to its own intentional or serious acts of negligence. The liability shall always be limited to not more than the amount corresponding

the Supplier's six (6) month's fixed and service specific monthly payment or in respect of partial deliveries not more than the amount corresponding to the partial delivery.

A claim for compensation for damages must be made against the Supplier within 1 (one) month from the Claimant becoming aware of the damage or from when the Customer should reasonably have been aware of the damage or in respect of claims based on late or delayed delivery, within 1 (one) month from the date of such delivery.

The Supplier shall not be liable to compensate any indirect, damages or consequential losses suffered by the Customer, whether actual or reasonably foreseen.

The Customer shall be responsible for its password use and shall undertake to store its password in the way that third parties have no access to it. The holder of the password i.e. the Customer, shall be responsible for actions made through the use of its password or by access granted through its password. The Customer shall be responsible for returning to the Supplier all the Supplier's property including the password, as well as to cease any further use of the Supplier's intellectual property rights without delay when this Agreement is terminated for whatever reason whatsoever.

The Customer shall be responsible for managing its user rights and to pay for the data it has used through the use of the Software. The Customer shall also be responsible for the correctness of the data it has given and performed and for the expenses incurred by the Supplier in correcting any incorrect data. Should the Customer use the service for illegal or unethical actions, e.g. sending junk mail, the Customer shall be fully responsible for all damages caused to the Supplier or any third parties. The Customer shall also otherwise use the Service at its own risk and shall be responsible for its own actions when using the Software.

The Customer shall not load the Supplier's servers with more data than the Customer has been allocated and restricted to in the service entity or otherwise use them against the service entity.

The Customer hereby releases the Supplier and its employees from all liability whatsoever, flowing from or caused by any of the Customer's actions or its action on the Internet network or otherwise through the Customer's use of the Software Service.

This Agreement regulates detailed the Supplier's responsibility due to breach of agreement, as well as the Supplier's liability for damages.

## 5. Payments

Invoicing shall be done in advance according to the agreed Invoicing Periods. The term of the Agreement and the Invoicing Period shall begin when the Order Confirmation has been signed or the Software Service has commenced.

The Customer shall pay the invoices on the invoice due dates. If the payment is late, the Supplier has the right to charge interest on any overdue amounts for the period after due date at the rate of 12% per annum. The Supplier shall also be entitled to charge an administration fee of HKD1000 for each reminder or demand for payment of any overdue amount sent to the Customer.

If any payment is overdue, the Supplier has the right to prevent the use of the Software Service by the Customer until the payment has been made. A new connection fee shall be charged to the Customer in order to restore the Customer's access to the Software Service.

The Supplier has the right to develop and change the Software Service. The Supplier shall notify the Customer of such possible changes in advance and the Customer shall be liable to pay the Suppliers fees and expenses arising from such changes.

The Supplier has the right to change the service price and price structure for the Software Service. The Customer shall be notified of any price changes in connection with an invoice or otherwise by e-mail three (3) months before the new price shall come into effect.

The Supplier also has the right to change or adjust the pricing if the Customer's Data load in respect of the Software significantly differs from agreed load or is otherwise than the normal load.

## 6. Rights and Customer data

The intellectual property rights to the Software and amendments thereto belong to the Supplier or may vest in or belong to a third party.

The intellectual property rights and the title to the Customer Data belong to the Customer or may vest in or belong to a third party.

The Supplier has the right to use the Customer Data only for the purposes of this Agreement. The Customer shall be responsible for the integrity of its Customer Data and for ensuring that the Customer Data or its use does not infringe any third party rights or violate any legislation as in force from time to time.

Unless otherwise agreed in writing, the Supplier shall provide the Customer with the Customer Data upon the Customer's written request within 30 days of the Customer's written request. The Customer Data shall be delivered in an electronic form commonly in use. The Supplier shall have the right to charge for the collection, processing and delivery of the information in accordance with its agreed pricing principles. The Supplier's responsibility to keep the Customer Data shall terminate sixty (60) days from termination or expiration of the Agreement, after which the Supplier shall at its own expense destroy the Customer Data. The Supplier shall be entitled to destroy or retain the Customer Data to the extent required by law or regulation of any authority.

## 7. Temporary Closing of the service

The Customer has the right to request closing of the service or restriction of use of it. The Supplier has, however, the right to charge a basic fee from closing time. A new opening fee shall be charged of the reopening of the use.

## 8. Infringement of intellectual property rights

### 8.1.

The Supplier warrants that the Software does not infringe any third party intellectual property rights in the agreed country of delivery or use. Unless otherwise agreed in writing, the agreed country of delivery and use shall be Hong Kong SAR. The Customer shall be responsible for the above mentioned factors for its own Customer Data.

## 8.2

The Supplier shall at its own expense indemnify the Customer against claims brought against the Customer that the Software or Software Service infringes any third party intellectual property rights in the agreed country of delivery or use, provided that the Customer promptly notifies the Supplier in writing of such claim/s and permits the Supplier to defend or settle the claims on behalf to the Customer and gives to the Supplier, at the request of the Supplier and at the Supplier's expense, all necessary information and assistance available including all the necessary authorizations. The Supplier shall pay all damages awarded in a trial or agreed to be paid to a third party if the Customer has acted in accordance with its obligations in terms of this section 8.2.

## 8.3.

The Supplier shall, however, not be liable to indemnify the Customer if the claim (a) is asserted by a company, which exercises control over the Customer or which is controlled by the Customer; (b) results from alteration of the Software by the Customer or from compliance with the Customer's written instructions; (c) results from use of the Software Service in combination with any product or service not supplied or approved by the Supplier; or (d) could have been avoided by the use of a released product or service that complies with the Agreement and corresponds with the Software Service and which product or service is offered for use to the Customer by the Supplier without separate charge.

If in the reasonable opinion of the Supplier, the Software infringes any third party intellectual property rights in the agreed country of delivery or use, or if such infringement has been confirmed by way of a Court judgment, the Supplier may at its own expense and discretion either (a) obtain the right to continue use of the Software for the Customer; (b) replace the Software with a product or service that complies with the Agreement and corresponds to the agreed Software; or (c) modify the Software in order to eliminate the infringement in such a manner that the modified Software complies with the Agreement. If none of the above-mentioned alternatives are available to the Supplier on reasonable terms, the Customer shall, at the request of the Supplier, stop using the Software, and the Supplier shall refund the price paid by the Customer for the Software Service less the proportion of the price corresponding to the time that the Customer has already used the Software Service.

The extent of the Supplier's liability for infringement of intellectual property rights in the Software shall be limited to that as set out in this section 8.

## 9. Force majeure

Neither party shall be liable for any delay or damage caused by an impediment beyond that party's control and which the party could not have reasonably taken into account at the time of conclusion of the Agreement and whose consequences the party could not reasonably have avoided or overcome.

Each party shall without delay inform the other party in writing of any relevant force majeure event and the termination of such force majeure event.

## 10. Term of Agreement / Software Service

The Agreement shall be valid until further notice with three (3) month's term of notice, unless otherwise agreed in writing. In case a party delivers the termination notice later than 30 days after an Invoicing Period has begun, the termination of the Agreement shall come into effect after the next Invoicing Period has ended. The Supplier has the right to charge service fees until the notice period has ended. Already paid service fees shall not be refunded. The Supplier may terminate the Agreement immediately without any notice period, if the Customer has not made payment of an invoiced amount and the delay in payment has continued for 28 days from the invoice due date, or if the Customer's estate is declared bankrupt or subject to liquidation, or the Customer has been declared impecunious and its assets are subject to attachment, or the Customer disturbs other network communications or the Customer uses the service in illegal activities or activities against good practice. For example, if the Customer sends junk mail, that will be considered to be activity against good practice.

## 11. Confidentiality

In connection with the Agreement, the parties may receive from each other commercial and technical information, in connection with the other party's business secrets or to which the other party has intellectual property rights. The Supplier's business secrets include all development material, applications and final results, relating to the Agreement or the tender documents and any of its services. The Customer shall not utilize the received information in its own business or in the business of its sphere of interest or in any other activities without the Supplier's written approval. The sphere of interest includes the companies belonging to the same group as the Customer and persons belonging to decision-making bodies of such companies as well as persons and companies closely related to them. The Customer shall not expose received information or disclose such information to any third party. Only the use of necessary information, required to fulfill a party's obligations under the Agreement is permitted. These conditions shall remain of full force and effect after the Agreement has been terminated.

The Supplier shall not expose any documents, files or email registers, or disclose such to any third party.

The Supplier has the right to freely use the know-how developed during its contractual relationship with the Customer, through the provision and development of the Software Service, in its business activities, e.g. in service development work.

The Supplier has the right to mention the Customer's name and generally make reference to its service quality when marketing its services, unless the Customer has specifically prohibited such reference to the Customer.

## 12. Termination assistance upon termination of the agreement

### 12.1

On expiration or termination of the Agreement, the Supplier agrees to provide reasonable assistance for the transition of the Software to another Supplier if required by the Customer.

Unless otherwise agreed in writing, the obligation to assist shall end after 3 (three) months from the expiration or termination of the Agreement. The agreed hourly pricing principles shall apply to the Supplier's services relating to the Supplier's assistance with the required transfer.

#### 12.2

The obligation to assist with the transfer in terms of section 12.1 shall not apply if the Agreement is terminated due to a material breach by the Customer or, if the Customer has failed to settle all amounts due to the Supplier or fails to provide an acceptable guarantee for such payments and any further payments which are due under the Agreement.

### 13. Applicable law and settlement of disputes

The Parties agree that any dispute, controversy or claim arising out of or relating to the Agreement, the validity thereof or the breach or termination thereof shall be finally resolved by the courts of SAR Hong Kong.

### 14. Validity of general terms and conditions

These general terms and conditions shall replace all of the Supplier's previous terms and conditions in respect of the provision of its services.

The Supplier reserves the right to change or amend these general terms and conditions, as well as the applicable prices for any of its services. The Customer shall be informed of any such changes not later than (3) three months before the amendment or change comes into effect.