



GENERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES (THESE "CONDITIONS").

1. INTRODUCTION

- 1.1 These Conditions apply to the Supplier's provision of Services to the Customer pursuant to the Contract.
- 1.2 In addition, if the Supplier is providing Support Services to the Customer pursuant to the Contract, the terms of Schedule 1 will also apply.

2. INTERPRETATION

- 2.1 In these Conditions, the following definitions apply:

"Accepted Order" means an order for the provision of the Services submitted by the Customer which has been accepted by and become binding on the Supplier in accordance with Condition 4.6(a);

"Affiliate" means, from time to time in relation to an entity, another entity Controlling, Controlled by, or under common Control with, that entity;

"Applicable Laws" means all regional, national and international laws, rules, regulations, standards and directions, including those imposed by any governmental or regulatory authority and all applicable industry standards and standards determined by any self-regulatory body which apply from time to time to the person or activity in the circumstances in question;

"Business Day" means a day (except a Saturday or a Sunday) on which the banks are generally open for business in Hong Kong;

"Charges" means the charges payable by the Customer for the Services in accordance with Condition 7;

"Confidential Information" means all information (including all oral and visual information, and all information recorded in writing or electronically, or in any other medium or by any other method) disclosed to, or obtained by one party from the other party or a third party acting on that other party's behalf, including:

- (a) any information relating to the business of a party, including: any ideas; business methods; finance; prices, business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services; know-how or other trade secrets; processes; marketing opportunities; any matters connected with the products or services manufactured, marketed, provided or obtained by a party; information concerning a party's relationships with actual or potential clients (including, in the Supplier's case only, customers of the Supplier's) and the needs and requirements of a party and of such persons; and
- (b) any other information which, if disclosed, would be liable to cause harm to the party whose information is disclosed;

"Contract" means the relevant contract (which could be in the form of a Proposal, Quotation, a master agreement or otherwise) entered into between the Supplier and the Customer for the provision of the Services, which expressly incorporates these Conditions by reference;

"Control" means, with regards to the relevant entity, the legal, beneficial or equitable ownership, directly or indirectly, of 50% or more of the capital stock of that entity ordinarily having voting rights, or the equivalent right under contract to control management decisions with regard to relevant subjects;

"Customer" means the customer for the Services as identified in the Contract;

"Deliverables" means:

- (a) the "Deliverables" as identified under the Contract; and
- (b) all documents, materials, products, data, equipment and tools produced by the Supplier (or its agents, contractors and employees) for the Customer as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"EULA" means the *General End User Licence Agreement* that the Customer agreed to in relation to the relevant Software. The current version of the EULA is provided upon request.

"Force Majeure" means any cause or circumstance preventing, hindering or delaying a party performing any or all of its obligations arising out of or connection with the Contract which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of that party, including: strikes, lockouts or other industrial disputes ; protests; failure of a utility service or transport network; act of God; war or national emergency; an act of terrorism; riot or civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery (other than caused by a failure to maintain by the affected party; fire; explosion; flood; storm; epidemic; nuclear, chemical or biological contamination; sonic boom; and default or delays of the other party or subcontractors;

"Insolvency Event" means where the relevant party, or an Affiliate to that party, enters into liquidation, administrative receivership, bankruptcy or makes any voluntary agreement with its creditors or is unable to pay its debts as they fall due;

"Intellectual Property" means all intellectual property rights in any part of the world, including patents (including supplementary protection certificates), utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, rights in domain names, registered designs, unregistered design rights, rights in designs, semiconductor and topography rights, copyrights and neighbouring rights, database rights, rights in confidential information and know-how and (in each case) rights of a similar or corresponding character and in all applications and rights to apply for protection of any of the foregoing;

"Losses" means any and all costs, claims, demands, liabilities, expenses, damages or losses (including any direct, indirect or consequential losses), loss of profit (whether direct or indirect) and all interest, penalties and legal and other professional costs and expenses of any nature;

"Price List" means the Supplier's published price list in relation to the Services, in force from time to time as notified to the Customer;

"Proposal" means a proposal for the supply of Services, as issued by the Supplier and agreed to by the parties, and which expressly incorporates these Conditions by reference;

"Quotation" means a quotation for the supply of Services, as issued by the Supplier and agreed to by the parties, and which expressly incorporates these Conditions by reference; A Quotation is generally issued by the Supplier for the provision of additional Services to the scope that was initially agreed by the parties pursuant to an executed Proposal;

"Services" means the services (or any part of them), including any Deliverables, to be provided by the Supplier to the Customer under the Contract. The scope of the Services to be provided by the Supplier to the Customer will be limited to those Services as expressly set out in the Contract;

"Specification" means the description or specification of the Services to be provided by the Supplier to the Customer;

"Supplier" means Clear Future Technologies Limited, a Hong Kong registered company with its registered address at 10th floor, United Centre, 95 Queensway, Hong Kong;

"Supplier Materials" means all:

- (a) documents, materials, data (in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, specifications and reports (including drafts)); and
- (b) products, equipment systems, cabling, facilities and tools,

provided by or on behalf of the Supplier to the Customer and used directly or indirectly in the supply of the Services; and

"Term" has the meaning given under Condition 11.1.

2.2 The headings in these Conditions do not affect their interpretation.

2.3 A reference to a statute or statutory provision includes a reference to any subordinate legislation and is a reference to that statute, statutory provision or subordinate legislation in force at the date of the Contract as modified, consolidated, superseded, re-enacted or replaced (whether with or without modification) from time to time after the date of the Contract.

- 2.4 A reference to a particular day or time of day is, unless stated otherwise, a reference to that day or time in the city where the Supplier's registered business address is located.
- 2.5 A reference to **"including"**, **"includes"**, **"in particular"** or any similar expression will be construed as illustrative and does not limit the scope of the words preceding it.
3. **APPLICATION OF THESE CONDITIONS**
- 3.1 Unless the Supplier expressly agrees otherwise, these Conditions apply to the following:
- (a) all Proposals and Quotations issued by the Supplier (whether or not accepted by the Customer);
 - (b) all orders for the provision of Services received by the Supplier (whether or not accepted by the Supplier); and
 - (c) all contracts for the supply of Services by the Supplier (including the Contract).
- 3.2 Without prejudice to Condition 3.1, these Conditions:
- (a) are incorporated in their entirety into and will form part of the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply, rely on, refer to or incorporate by way of any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing), except to the extent that these Conditions are expressly amended or excluded by the Contract; and
 - (b) supersede all previous oral or written representations made by or on behalf of the Supplier which relate to the Services and/or the subject matter of the Contract.
- 3.3 Where there is any conflict between the provisions of these Conditions and the Contract (excluding these Conditions), the Contract will apply to the extent of the conflict (except where expressly identified otherwise).
- 3.4 The Contract constitutes the entire agreement between the parties relating to the subject matter of it. Neither party has entered into the Contract in reliance on any representation, warranty or undertaking of the other party, except as expressly referred to in the Contract. In particular, the Customer acknowledges and agrees that it has not relied on any statement, promise or representation which is not set out in these Conditions or the Contract, including any information (e.g. prices and dimensions) specified in drawings, illustrations, catalogues, websites, offers, advertising materials, standardisation sheets and the like, unless as expressly stated otherwise within the Contract.

3.5 All Software (including all Documentation) that is made available by the Supplier to the Customer (whether under the Contract or otherwise) is licensed in accordance with the terms and conditions of the EULA and the Contract (if applicable).

3.6 The Customer acknowledges and agrees that:

- (a) an order for the provision of Services submitted by the Customer to the Supplier or an acceptance of a Proposal or Quotation by the Customer will be deemed to be an offer by the Customer to purchase the Services subject to these Conditions; and
- (b) by placing an order for the provision of Services with the Supplier or accepting a Proposal or Quotation, the Customer accepts these Conditions in their entirety.

4. PROPOSALS, QUOTATIONS AND ORDERS

4.1 The Supplier may prepare a Proposal or Quotation for the Customer, based on discussions between the parties.

4.2 A Proposal or Quotation:

- (a) unless stated otherwise in the relevant Proposal or Quotation or earlier withdrawn in accordance with Condition 4.3, is only valid for 30 days from the date of the Proposal or Quotation;
- (b) is given on the basis that once executed by the Customer, will become legally binding between the Supplier and the Customer (as contemplated by Condition 4.6 below), but before such execution occurs, no legally binding agreement is formed between the parties in relation to that Proposal or Quotation; and
- (c) incorporates all of these Conditions by reference.

4.3 The Supplier is entitled to withdraw any Proposal or Quotation at any time during the period stated in Condition 4.1(a).

4.4 Unless agreed otherwise in writing by the Supplier:

- (a) all orders submitted by the Customer must be made on the Supplier's standard order form as notified by the Supplier from time to time. Where the Customer is submitting an order to the Supplier, the Supplier reserves the right to accept or decline any such order at its discretion and no legally binding Contract is formed between the parties until the Supplier notifies the Customer of its acceptance of such order, at which point a Contract is entered into between the parties; and
- (b) the Customer may only accept a Proposal or Quotation by executing a copy of that Proposal or Quotation and returning it to the Supplier using the delivery method as required by the Supplier.

- 4.5 The Customer will ensure that:
- (a) any information contained in a Customer's order submitted to the Supplier; and
 - (b) any applicable information, drawing, design and specification which the Customer provides to the Supplier,
- is complete and accurate.
- 4.6 Once a Proposal or Quotation is signed by the Customer, it will:
- (a) be binding on the parties;
 - (b) become an "**Accepted Order**";
 - (c) if no prior Contract (e.g. a master agreement) was entered into by the parties in relation to the Accepted Order, the Accepted Order becomes a stand-alone Contract (that incorporates all of these Conditions and the EULA by reference); and
 - (d) if a prior contract was entered into by the parties, the Accepted Order will be treated in accordance with Condition 4.10 below.
- 4.7 The Customer is not entitled to cancel an Accepted Order except with the Supplier's consent (at its sole discretion).
- 4.8 If the Supplier agrees to cancel or vary an Accepted Order at the request of the Customer, then such cancellation or variation (as appropriate) is subject to:
- (a) the reimbursement by the Customer to the Supplier, on demand, of all costs and expenses incurred by the Supplier in connection with such cancellation or variation; and
 - (b) in the case of a variation, the appropriate adjustment to the price payable for the Services which are subject to the varied Accepted Order.
- 4.9 The Supplier expressly reserves the right to suspend delivery of any Services under any Accepted Orders (in which case the Supplier will promptly inform the Customer of the reason for such suspension), for the following reasons:
- (a) any breach by the Customer of these Conditions or the Contract; or
 - (b) Applicable Laws require such suspension.
- 4.10 Following the initial signing of an Accepted Order (and Contract) by the parties, the parties may decide to add or revise the Services (including the provision of different products) pursuant to the terms of the existing Contract between the parties. Where this is the case:
- (a) any such provision will be provided pursuant to a separate Quotation mutually agreed by the parties; and

- (b) such separate Quotation will be (unless otherwise agreed by the parties) deemed to be incorporated into, form part of and be governed by the terms of the Contract (including these Conditions) by reference (i.e. the Quotation will sit under the executed Contract and for part of the same Contract)

5. **SUPPLY OF THE SERVICES**

5.1 The Supplier will supply the Services to the Customer:

- (a) for the period of time as set out in the Contract or the Accepted Order (as applicable);
- (b) in accordance with the terms of these Conditions and the Contract (including the Accepted Order);
- (c) in accordance with the Specification in all material respects; and
- (d) in Hong Kong only, unless as otherwise agreed in writing by the parties.

5.2 The Supplier will use reasonable efforts to meet any performance dates for the Services specified in the Accepted Order and/or the Specifications, but any such dates will be estimates only and time will not be of the essence for performance of the Services (or any part of them).

5.3 The Supplier is entitled to make any changes to the Services at any time:

- (a) which are necessary to comply with any Applicable Laws or safety requirements; or
 - (b) which do not materially affect the nature or quality of the Services,
- and the Supplier will notify the Customer in such event.

5.4 The Customer will:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) where required by the Supplier, provide the Supplier (including its employees, agents, consultants and subcontractors) with access at all reasonable times to the Customer's premises, office, accommodation and other facilities, for the purpose of providing the Services;
- (c) provide such information as the Supplier may reasonably request to facilitate the provision of the Services and ensure that such information is accurate in all material respects;
- (d) prepare the Customer's premises for the supply of the Services if necessary;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- (f) keep and maintain all Supplier Materials at the Customer's premises in safe custody at the Customer's own risk, maintain the Supplier Materials in good

condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's instructions or authorisation.

- 5.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (such act, omission or failure being a "**Customer Default**"):
- (a) the Supplier will (without limiting any other rights or remedies which the Supplier may have (whether provided by law, equity, these Conditions or the Contract)) have the right to:
 - (i) suspend performance of the Services until the Customer remedies the Customer Default; and
 - (ii) rely on the Customer Default to relieve the Supplier from the performance of any of the Supplier's obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of the Supplier's obligations;
 - (b) the Supplier will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of the Supplier's obligations; and
 - (c) the Customer will reimburse the Supplier for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from a Customer Default.

6. DELIVERABLES AND ACCEPTANCE

- 6.1 The Supplier may, from time to time, as part of the Services and only if expressly set out in the relevant Accepted Order, be required to deliver certain Deliverables to the Customer.
- 6.2 The relevant Accepted Order may state more specific requirements in relation to the relevant Deliverable, including the relevant acceptance procedure applicable to, and more detailed specifications for, such Deliverable.
- 6.3 Where the parties have not agreed a specific acceptance procedure for a Deliverable, then that Deliverable will be deemed to be accepted by the Customer at the earlier of the following events:
- (a) when the Client has confirmed in writing its acceptance of the Deliverable; or
 - (b) 30 days after the Deliverable's delivery to the Customer, unless the Customer (acting reasonably) has given the Supplier notice of any alleged material failure of the Deliverable to satisfy the requirements and specifications for the Deliverable within such 30 day period. Such notice must include reasonably sufficient details for the Supplier to identify the issues causing such alleged material failure of the Deliverable. Following such notice, if the Supplier (acting reasonably):

- (i) assesses that there has been such a material failure of the Deliverable, the parties shall work together in good faith to resolve the relevant material failure; and
- (ii) assesses that there has been no such material failure of the Deliverable, the Supplier will notify the Customer of such assessment and the Deliverable is deemed to be accepted by the Customer at the date of such notification.

7. CHARGES

7.1 Unless agreed otherwise in writing by the Supplier in the Contract or as set out in Schedule 1 in relation to the Support Services only, the Charges (and any payment terms for those Charges in addition to or in replacement of this Condition 7) will be as stated in the Accepted Order or, if no Charge is stated, the Price List in force when the order for the provision of the Services becomes an Accepted Order.

7.2 Unless agreed otherwise by the parties in writing, the Charges are:

- (a) given in the currency as set out in the applicable Accepted Order (or if that is not applicable, the Price List); and
- (b) exclusive of any value added tax which may be chargeable. Where any taxable supply for value added tax purposes is made under the Contract by the Supplier to the Customer, such value added tax will be payable by the Customer when the Customer is due to pay for the Services:
 - (i) in addition to the Charges; and
 - (ii) at the rate and in the manner for the time being prescribed by law,provided that the Customer has received a valid value added tax invoice from the Supplier.

7.3 The Supplier is entitled to increase the Charges of any Services in an Accepted Order at any time before delivery of the Services, to reasonably reflect any increase in the cost of the supply of the Services by the Supplier, where such increase is due to any of the following factors:

- (a) any factor beyond the Supplier's control (including but not limited to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities, specifications or types of the ordered Services;
- (c) any changes to the Services made by the Supplier in accordance with Condition 5.3; and/or
- (d) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 7.4 The Supplier may increase the standard rates of Charges which apply to the Services once per calendar year. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase.
- 7.5 Subject to any payment terms as set out in the Contractor any other agreed written arrangements between the parties, the Supplier may invoice the Customer for the Charges, together with any costs and expenses payable by the Customer, on or at any time after the supply of the Services. Copies of such invoices will be sent to the Customer's mailing address (or, if requested by the Customer, to the Customer's email address) as notified by the Customer to the Supplier from time to time.
- 7.6 The Customer will pay all invoiced amounts within 30 days of the date of the invoice (or within such other period as set out by the Supplier in the relevant invoice), via the payment method as required by the Supplier from time to time.
- 7.7 Payments made by cheque or credit transfer will not be deemed paid unless and until the Supplier's account is credited with cleared funds.
- 7.8 If the Customer fails to make any payment when due by it under this Contract, then, without affecting any other rights and remedies which the Supplier may have, the Supplier will be entitled, at its sole discretion, to:
- (a) suspend its performance of these Conditions, including the suspension of any performance of the Services, until paid;
 - (b) charge the Customer interest on the overdue amount, at the lesser of the following rates, calculated from, but excluding, the due date to, and including, the date of actual payment calculated on a daily basis:
 - (i) 1% more than the best lending rate quoted from The Hong Kong and Shanghai Banking Corporation Ltd in Hong Kong; or
 - (ii) the maximum percentage permitted by Applicable Laws on that overdue amount;
 - (c) treat such failure as a material breach of the Contract which is incapable of remedy; and/or
 - (d) from the date that the Customer fails to make the relevant payment, treat all unpaid sums payable to the Supplier by the Customer as immediately due.
- 7.9 Each payment to be made by the Customer to the Supplier pursuant to or in connection with the Contract must be paid in full without any deduction, withholding, restriction or set-off, unless the Customer is required by Applicable Laws to make such a payment subject to a deduction or withholding.
- 7.10 Unless otherwise expressly specified in the Contract, all prices set out in the Quotation are based on the Supplier's standard service (including software) specifications, features and functionalities only.

8. **WARRANTIES**

8.1 Each party warrants that:

- (a) it is entitled to enter into the Contract;
- (b) it is validly incorporated and duly registered under Applicable Laws, and has power to conduct its business as conducted at the date of the Contract;
- (c) the Contract will, when executed, constitute valid and binding obligations of the party and any relevant Affiliates who are parties to it; and
- (d) the obligations in the Contract do not violate the terms of any other agreement, undertaking, judgment or court order which binds it or its relevant Affiliates.

8.2 In addition to the warranties given under Condition 8.1, the Customer warrants and undertakes that:

- (a) it has the authority to supply (and to authorise the Supplier to use in the manner contemplated by the Contract) any goods, designs, specifications, instructions or information furnished by it to the Supplier in relation to the Services; and
- (b) any work undertaken by the Supplier on the basis of such designs, specifications, instructions and/or information will not infringe the rights of any third parties.

8.3 The Supplier represents and warrants to the Customer that it will use reasonable efforts to perform the Services with reasonable skill and care.

8.4 APART FROM THE ABOVE WARRANTY UNDER CONDITION 8.3, TO THE EXTENT PERMITTED BY APPLICABLE LAWS AND REGULATIONS, NEITHER THE SUPPLIER NOR ANY OF ITS AFFILIATES MAKE ANY REPRESENTATION OR WARRANTY OR GIVES ANY UNDERTAKING (WHETHER EXPRESS OR IMPLIED) IN RELATION TO THE SERVICES, THE DELIVERABLES OR THESE CONDITIONS, INCLUDING ANY REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS IN RELATION TO SATISFACTORY QUALITY, FITNESS FOR PURPOSE, IDENTIFICATION OF VIRUSES OR THAT ALL OR ANY ERRORS AND BUGS WILL BE CORRECTED.

9. **LIABILITY**

9.1 The Supplier's total and cumulative liability under these Conditions and the Contract, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise, is limited to the total amount paid by the Customer to the Supplier under the most recent Accepted Order to which the claim relates (as at the relevant claim date).

- 9.2 Except to the extent Condition 9.3 applies, the Supplier will not be liable for any:
- (a) direct damages or losses incurred by the Customer;
 - (b) indirect, incidental or consequential damages or losses incurred by the Customer; or
 - (c) claims for loss of business, sales, revenue, goodwill or profits of the Customer,

arising from or in connection with these Conditions or the Contract, even if such losses are foreseeable and/or the Supplier has been advised of or is aware (or reasonably should have been aware) of the possibility of the Customer incurring or suffering such losses.

- 9.3 Nothing in the Contract or these Conditions will limit or exclude the Supplier's liability (if any):
- (a) to the Customer for personal injury or death suffered by the Customer that is caused by the Supplier's negligence;
 - (b) for any matters which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or
 - (c) for fraud, fraudulent misrepresentation or wilful misconduct.

9.4 All references to the Supplier in this Condition 9 shall, for the purposes of this Condition 9 only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this Condition 9 and the indemnity set out in Condition 10.

9.5 Under no circumstances will the Supplier be responsible for any data losses of, or data recovery in relation to, the Customer.

9.6 Conditions 9 and 10 will survive the termination of the Contract.

10. **INDEMNITY**

10.1 In addition to any other indemnity granted by the Customer under these Conditions and the Contract, the Customer will indemnify and hold the Supplier harmless against any and all Losses incurred by the Supplier arising from the Customer's breach of these Conditions or the Contract.

11. **TERM AND TERMINATION**

11.1 The "**Term**" of the Contract shall be from the date that the Proposal was signed by the Customer until the earlier of:

- (a) the date that the Supplier has delivered the final Deliverable under the Contract to the Customer; or

- (b) the date that the Supplier has delivered the Services under the Contract to the Customer,

unless:

- (c) the Contract is terminated earlier pursuant to these Conditions; or
- (d) the Contract sets out an earlier expiry date (e.g. a fixed date).

11.2 The Supplier may terminate the Contract prematurely, with immediate effect and without further liability, by notice in writing to the Customer in the event that:

- (a) the Customer is in material breach of the Contract and:
 - (i) such breach is incapable of remedy; or
 - (ii) such breach is capable of remedy but the Customer fails to remedy the breach within 20 Business Days of the Customer receiving a written notice setting out particulars of the breach in reasonable detail and requiring the breach to be remedied;
- (b) an Insolvency Event occurs to the Customer;
- (c) in the Supplier's opinion (acting reasonably), the Customer is in a financial position which has or may deteriorate to such an extent that, in the Supplier's opinion, the Customer's capability to adequately fulfil the Customer's obligations arising out of or in connection with the Contract has or will be placed in jeopardy;
- (d) if any person agrees to acquire or acquires Control of the Customer;
- (e) in the circumstances set out at Condition 7.8(c); or
- (f) conducting any business which in the Supplier's opinion (acting reasonably), materially and negatively impact on the Supplier's or its Affiliates' public reputation; or
- (g) conducting any business which breaches, or in the Supplier's opinion (acting reasonably) may breach, any Applicable Laws.

11.3 Any expiry or termination of the Contract is without prejudice to the rights, duties and liabilities of either party accrued before termination.

11.4 Any Conditions that expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

11.5 On the termination of the Contract for any reason, the Customer will:

- (a) immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier will submit an invoice which will be payable by the Customer immediately on receipt;

- (b) as directed by the Supplier, return to the Supplier or destroy all Supplier Materials held by or on behalf of the Customer in written or graphic form and which have not been fully paid for;
 - (c) delete any Supplier Materials from the Customer's electronic files, computers or other recording media; and
 - (d) return to the Supplier any Deliverables which have not been fully paid for.
- 11.6 If the Customer fails to comply with Condition 11.5(b), 11.5(c) or 11.5(d), the Supplier may enter the Customer's premises and take possession of the affected Supplier Materials and the affected Deliverables. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property in or arising out of or in connection with the Services will be owned by the Supplier. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Supplier may, from time to time, require for the purpose of giving the Supplier the full benefit of the provisions of this Condition 12.
- 12.2 No right or licence is granted to the Customer in respect of the Supplier's Intellectual Property except as otherwise expressly specified in these Conditions or the Contract.
- 12.3 The Customer acknowledges that, in respect of any third-party Intellectual Property, the Customer's use of any such Intellectual Property is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer. The Customer agrees that any licence granted to it under the Contract to use any such third-party Intellectual Property is subject to the Customer's acceptance of and compliance with any licensing conditions notified to it in relation to such third-party Intellectual Property.
- 12.4 The Supplier acknowledges that all the Supplier Materials and all rights in the Supplier Materials are and will remain the exclusive property of the Supplier. The Customer will:
- (a) keep the Supplier Materials in safe custody at the Customer's own risk and maintain them in good condition until returned to the Supplier; and
 - (b) will not dispose or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 12.5 The Customer warrants, represents and undertakes that it will not infringe any of the Supplier's Intellectual Property. If the Customer becomes aware of any infringement or alleged infringement (whether by itself or a third party) of the Supplier's Intellectual Property, it will advise the Supplier of such as soon as possible and provide all assistance reasonably requested by the Supplier in resolving such issue.
- 12.6 The obligations arising out of or in connection with this Condition 12 will survive the termination of the Contract.

13. **CONFIDENTIALITY**

- 13.1 Each party (for the purpose of this Condition the "**Recipient Party**") may disclose the other party's Confidential Information:
- (a) to those employees, officers, representatives or advisers of the Recipient Party (together the "**Permitted Recipients**", who need to know such information for the purpose of carrying out the Recipient Party's obligations arising out of or in connection with the Contract, provided that Recipient Party will:
 - (i) be responsible for any unauthorised disclosure or use of the other party's Confidential Information made by any of the Permitted Recipients; and
 - (ii) take all reasonable precautions to prevent such disclosure or use; and
 - (b) as may be required by law, court order, or any governmental or regulatory authority.
- 13.2 A Recipient Party will not use the other party's Confidential Information for any purpose other than to perform the Recipient Party's obligations and to exercise the Recipient Party's right, in each case, arising out of or in connection with the Contract.
- 13.3 The obligations of confidentiality imposed by this Condition 13 do not apply to any Confidential Information that the Recipient Party is required to disclose by law or by any governmental or other regulatory authority (including the rules of any stock exchange or listing authority) and each party must give the other party at least seven days written notice of any intended disclosures of this sort unless the party making the disclosure is legally prohibited from doing so.

14. **PERSONAL DATA**

- 14.1 The following definitions apply:
- (a) "data user", "data processor", "data subject" and "processing" have the respective meanings given to those terms in the *Personal Data (Privacy) Ordinance (Cap.486)* (the "Ordinance"), and "data protection principles" means the six data protection principles set out in Schedule 1 to the Ordinance;
 - (b) "personal data" has the meaning given to that term in the Ordinance; and
 - (c) "Customer Personal Data" mean any personal data provided by or on behalf of the Customer.
- 14.2 The Supplier shall:
- (a) only carry out processing of any Customer Personal Data on the Customer's instructions; and

- (b) implement reasonable technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage.
- 14.3 The Supplier will, in accordance with applicable laws and otherwise using reasonable efforts, provide information and assistance as the Customer may reasonably require in relation to the Supplier's processing of any Customer Personal Data (including data subject requests).
- 14.4 The Customer acknowledges that the Supplier will be acting as a data processor, rather than as a data user, in respect of all Customer Personal Data processing activities which the Supplier carries out under this Agreement.
- 14.5 Except as expressly provided otherwise, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property in any (non-personal) data.

15. **NOTICES**

- 15.1 All notices and other communications under the Contract and these Conditions must be in English, in writing and delivered by hand or sent by registered mail, express courier, fax or e-mail to the relevant party's contact details as set out in the Contract. A notice will be effective upon receipt and will be deemed to have been received at the time of delivery, if delivered by hand, registered mail or express courier or at the time of successful transmission, if delivered by fax or e-mail.

16. **FORCE MAJEURE**

- 16.1 Subject to the affected party's compliance with Condition 16.2, if a party is subject to a Force Majeure event (the "**affected party**"), it will not be deemed to be in breach of the Contract or otherwise to have any liability in respect of the failure or delay in the performance of its obligations arising out of or in connection with the Contract as follows:

- (a) to the extent that the failure or delay in performing such obligations was due to the Force Majeure event; and
- (b) for so long as the Force Majeure event continues and for such time after the Force Majeure event stops as is necessary for the affected party, using its reasonable endeavours, to recommence performing its obligations arising out of or in connection with the Contract,

provided that the affected party:

- (c) has taken all reasonable steps to avoid such failure or delay; and
- (d) has and continues to comply with its obligations arising out of or in connection with this Condition 16.

- 16.2 The affected party must:
- (a) give written notice to the other party, specifying the nature and extent of the Force Majeure event, as soon as possible upon becoming aware of the Force Majeure event; and
 - (b) use all reasonable endeavours (without being obliged to incur any expenditure):
 - (i) to bring the Force Majeure event preventing or delaying the performance of its obligations to an end, or to find a solution by which its obligations arising out of or in connection with the Contract may be performed despite the continuance of the Force Majeure Event; and
 - (ii) whilst such Force Majeure event is continuing, to mitigate the severity of the Force Majeure Event effect upon the affected party.
- 16.3 If the failure or delay in the performance of its obligations by the Supplier due to the Force Majeure event in question continues for a continuous period of more than 30 days, then either party may terminate the Contract immediately by the service of a written notice on the other party. The notice to terminate must specify the termination date and once such notice has been validly given, the Contract will terminate on that termination date.

17. **GENERAL**

- 17.1 Except as expressly stated otherwise in the Contract, each party to the Contract will pay its own costs and expenses in relation to the preparation and execution of the Contract.
- 17.2 The Contract may only be amended by mutual agreement in writing.
- 17.3 The Supplier may assign, transfer or sub-contract its rights and obligations under the Contract to any of the Supplier's Affiliates without prior written consent of the Customer, but provided notice of such action is given to the Customer.
- 17.4 The Customer is not entitled to assign, transfer or sub-contract its rights and obligations under the Contract without the Supplier's prior written consent.
- 17.5 The invalidity or unenforceability of any provision of the Contract will not affect the validity or enforceability of any other provision of the Contract. Any such invalid or unenforceable provision will be replaced or be deemed to be replaced by a provision that is considered to be valid and enforceable. The interpretation of the replacing provisions will be as close as possible to the intent of the invalid or unenforceable provision.
- 17.6 No failure by any party to exercise, and no delay in exercising, any right under the Contract, in the event of breach of the Contract by any party, will operate as a waiver of such right or any other right under the Contract.

- 17.7 The Supplier will be entitled (but not obliged) at any time, without notice to the Customer, to set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer (in either case regardless of how the liability has arisen and whether or not the liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and, if the obligations are in different currencies, may for such purpose convert or exchange any currency.
- 17.8 Each of the rights and remedies provided by these Conditions and/or the Contract are cumulative and do not exclude any other rights and remedies (whether provided by law, equity or the Contract).
- 17.9 Any terms in the Contract, which are not defined within the Contract but are defined in these Conditions, will have the meaning given to those terms in these Conditions.
- 17.10 The Contract may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same document.
- 17.11 Except for the Supplier's Affiliates in relation to Condition 9.4 only, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Ordinance (Cap 623) to enforce the Contract.

18. **GOVERNING LAW AND JURISDICTION**

- 18.1 These Conditions and the Contract, and all non-contractual obligations arising in any way whatsoever out of or in connection with these Conditions and/or the Contract, are governed by, construed and take effect in accordance with the laws of Hong Kong.
- 18.2 The parties will, in relation to any disputes arising in connection with these Conditions and/or the Contract, use good faith and reasonable efforts to resolve the dispute between the parties for a period of two weeks following notification by a party to the other party of the relevant dispute. The CEOs of each relevant party will be involved in such dispute resolution efforts. If such dispute resolution efforts are unsuccessful, either party may escalate such disputes to be finally settled under the Rules of Arbitration of the International Chambers of Commerce. The seat of the arbitration will be the Hong Kong International Arbitration Centre, Hong Kong Special Administrative Region. The language of the arbitration will be English.
- 18.3 Nothing in these Conditions and/or the Contract will prevent or restrict the Supplier from at any time making any claim (including seeking any emergency, interim or interlocutory relief) in relation to a breach or alleged breach or potential breach by the Customer of these Conditions and/or the Contract, including any action to seek an injunction, specific performance of these Conditions and/or the Contract or any other equitable relief in respect of any actual or threatened breach of these Conditions and/or the Contract.

SCHEDULE 1

General Terms for Support Services

1. APPLICATION OF THIS SCHEDULE

- 1.1 This Schedule (in addition to these Conditions and the Contract) applies to any Support Services provided by the Supplier to the Customer in relation to certain Software.
- 1.2 Where there is any conflict between this Schedule and these Conditions, the terms of this Schedule apply to the extent of the conflict in relation to the Support Services only.

2. CONTRACTING PARTIES AND INTERPRETATION

- 2.1 In addition to the defined terms set out in Condition 2 of these Conditions, the following defined terms apply to this Schedule:

"Critical Fault" means a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the software in question;

"Licence" means the General End User Licence Agreement agreed to by the Customer in relation to its use of the Software;

"Maintenance Release" means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

"Modification" means any Maintenance Release or New Version which is provided by the Supplier and acquired by the Customer;

"New Version" means any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

"Non-Critical Fault" means any reproducible fault in the Software other than a Critical Fault;

"Sites" means the sites agreed to by the parties as expressly set out in the Contract;

"Software" has the meaning given to that term under the EULA, and includes all Documentation (as defined under the EULA);

"Standard Support Hours" means 9:00am to 6:00pm on a Business Day;

"Standard Support Service" means the Support Service as further set out in Appendix 1;

"Support Service" means the Standard Support Service;

"Supported Software" has the meaning given under Section 3.1;

"Third-Party Licences" means any licence terms that govern the use of the relevant Third-Party Software; and

"Third-Party Software" means any third-party software (whether open source, proprietary or otherwise).

3. **SUPPORTED SOFTWARE**

3.1 The Supported Software is:

- (a) the Software to be supported, as set out in the Contract;
- (b) any Modification which is acquired by the Customer (whether under the Licence, this Schedule or any other agreement between the Supplier and the Customer) during the course of the Licence and which accordingly becomes part of the Software; and
- (c) any other software which the Supplier and the Customer agree to be Supported Software for the purposes of this Schedule, as set out in the Contract.

3.2 In relation to Maintenance Releases:

- (a) the Supplier shall from time to time make Maintenance Releases available to the Customer without charge; and
- (b) if the Customer fails to acquire and install a Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier may terminate the provision of the Support Services for that relevant Supported Software by giving one month's written notice to the Customer.

3.3 For the avoidance of doubt, the Supplier has no obligation to make available any New Versions of the Software to the Customer as part of the Support Services.

3.4 The Supplier will not support any Third-Party Software as part of the Supported Software, unless otherwise expressly agreed with the Customer pursuant to Section 9.1.

4. **THE SERVICES**

4.1 The Customer may order the Support Services from the Supplier in accordance with these Conditions. If the Customer does make such order and the Supplier accepts such order in accordance with these Conditions, the Supplier shall supply, and the Customer shall take and pay for, the Support Services. Details of the Support Services are set out in Appendix 1 to this Schedule and may be further set out in the Contract.

- 4.2 The Supplier may, on prior notice to the Customer, make changes to the Support Services, provided such changes do not have a material adverse effect on the Customer's business operations.
- 4.3 The Supplier shall have no obligation to provide the Support Services where faults arise from:
- (a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
 - (b) failure to maintain the necessary environmental conditions for use of the Software;
 - (c) use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
 - (d) relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
 - (e) any breach of the Customer's obligations under this Schedule, the Contract or the relevant Licence, howsoever arising;
 - (f) having the Software maintained by a third party;
 - (g) any Modification not authorised by the Supplier; or
 - (h) operator error.
- 4.4 The Customer acknowledges that the Supplier has the right to discontinue the support and development of any Software at any time in its sole discretion, provided that the Supplier:
- (a) gives 30 days' notice of such discontinuation; and
 - (b) does not discontinue the relevant Support Services for such Software during the then current term of the Support Services.
- 4.5 The Supplier shall have no obligation to provide the Support Services for:
- (a) any versions of the Software other than the version as set out in the relevant Accepted Order; and
 - (b) any Software that is no longer supported by the Supplier pursuant to Section 4.4 above.
- 4.6 The Supplier may limit or suspend the provision of the Support Services if the Customer uses the Support Services in an abusive or fraudulent manner, as determined by the Supplier (acting reasonably) – for example, making a high number of calls regarding previously resolved issues.

5. SUPPLIER'S ON-SITE SUPPORT SERVICES

- 5.1 The Supplier will provide Support Services on the Customer's premises only if this is expressly agreed in the relevant Accepted Order.
- 5.2 The Supplier shall ensure that, while on the Customer's premises in its provision of the on-site Support Services pursuant to Section 5.1, the Supplier's staff members who enter such premises with the authority of the Supplier for the purpose of, or in connection with, the provision of the Support Services, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Supplier shall incur no liability for any delay in performing or failure to perform its obligations under this Schedule as a result of compliance with the terms of this Section 5.2.

6. CHARGES

- 6.1 The Customer agrees to pay the Charges for the relevant Support Services provided by the Supplier. The Charges (including whether such Charges are paid on a periodic basis or on a delivery-of-Services basis) will be set out in the relevant Appendices to this Schedule, unless otherwise set out in the Contract.
- 6.2 All Charges for the Support Services are paid on a pre-paid or periodic basis and non-refundable basis.
- 6.3 The Customer shall pay all costs (at the Supplier's then prevailing rates) and expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by this Schedule.
- 6.4 The Customer shall reimburse any travel or travel-related expenses incurred by the Supplier where such expenses are incurred directly for the purpose of providing on-site Support Services or otherwise for the provision of the Services outside of the Supplier's premises, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 6.5 The Supplier may increase the Charges once per calendar year. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase.
- 6.6 The Supplier may increase the Charges as from each anniversary of the date that the Supplier commences the provision of the relevant Support Services. Any increase shall be notified to the Customer at least one month before such anniversary.

7. THE CUSTOMER'S RESPONSIBILITIES

- 7.1 Without prejudice to Section 5.2, the Customer shall provide the Supplier and all other persons duly authorised by the Supplier with full, safe and uninterrupted access, including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Support Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Support Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety.
- 7.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 7.3 The Customer shall:
- (a) co-operate with the Supplier in performing the Support Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
 - (b) report faults promptly to the Supplier; and
 - (c) keep full backup copies of all of its data.

8. CUSTOMER'S RESPONSIBILITIES AND RISKS

- 8.1 The Customer acknowledges that:
- (a) it is exclusively responsible for:
 - (i) reviewing any new Modifications in accordance with Section 3;
 - (ii) ensuring that its staff are trained in the proper use and operation of the Software;
 - (iii) ensuring the security, completeness and accuracy of all inputs and outputs;
 - (iv) making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
 - (v) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;
 - (b) the level of the Charges reflects the allocation of risk between the parties set out in this Section 8; and
 - (c) it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.

8.2 All dates supplied by the Supplier for the delivery of the Modifications or the provision of the Support Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

9. **THIRD-PARTY SOFTWARE**

9.1 The Customer represents, warrants and undertakes to the Supplier that it has the right to grant the Supplier access to any Third-Party Software that it provides to the Supplier under the Contract. The Customer acknowledges and agrees that the Supplier has expressly relied on this representation in agreeing to support any Third-Party Software as part of the Supported Software (as expressly set out in the Contract).

9.2 The Customer shall:

- (a) comply with the Third-Party Licence; and
- (b) indemnify the Supplier and its Affiliates (including all of their respective employees, contractors, suppliers and agents) (collectively, the "**Indemnified Parties**") against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier Indemnified Parties arising out of or in connection with the Customer's breach of:
 - (i) the terms of any such Third-Party Licence; and/or
 - (ii) Section 9.1.

9.3 The Supplier may treat the Customer's breach of any Third-Party Licence as a material and irremediable breach of the Contract.

9.4 The Supplier's provision of the Support Services under this Schedule for a particular Supported Software shall automatically terminate on termination or expiry of the Licence for that Supported Software, but such expiry or termination shall have no effect on the licences granted under that relevant Licence.

10. **EFFECT OF TERMINATION**

10.1 Other than as set out in the Contract, neither party shall have any further obligations to the other under this Schedule after termination of the relevant Support Services.

10.2 On termination of the relevant Support Services for any reason, the Customer's right to receive the Support Services shall cease immediately and each party shall as soon as reasonably practicable:

- (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party; and

- (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.

Appendix 1- Standard Support Service

Part A– Description

1. PROVISION OF STANDARD SUPPORT SERVICES

1.1 The Standard Support Services includes the Services set out in Section 2 of this Part A, and will be provided:

- (a) during the Standard Support Hours only; and
- (b) only to a maximum of TWO named technical support (or Administrators) contacts from the Customer, as notified by the Customer to the Supplier from time to time.

2. STANDARD SUPPORT SERVICES

2.1 If any Support Service additional to the below Standard Support Services is required, it may be provided subject to the parties' express agreement as set out in the Contract.

- (a) Where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release the Supplier may decline to provide assistance in respect of that Non-Critical Fault.
- (b) A telephone help desk to provide first-line technical support to users of the Supported Software i.e. to assist the Customer with general enquiries in connection with the Supported Software.
- (c) Remote diagnosis and, where possible, correction of faults using the software management software, more specifically to correct all errors, bugs and failures of the Software to comply with any warranty or term of the agreement (as if such warranty or term continued beyond its expiry date), deliver the resulting Maintenance Release to the Customer, install it on the Customer's equipment and hand it over to the Customer for testing.
- (d) Up to One time during the Contract period for the on-site technical support.