

Terms and Conditions for provision of Services and usage of software

The Customer, by signing and accepting the Quotation for Service provided by Eleos Web Pte Ltd ("ELEOS"), agrees to be bound by the following terms and conditions:

1. Definitions and Interpretation

1.1

"Application Form" means the written application form to subscribe for any Service.

"Authorised User" means any person duly authorised by the Customer to use or access the Service using the User Code provided by **ELEOS**.

"Authorities" include the relevant governing authorities in Singapore including but not limited to Infocomm Development Authority of Singapore.

"Commencement Date" means the date on which the Service is ready for service as indicated by the Customer using the Service or signing a Service Report, whichever is the earlier.

"Customer" means the Person whom has accepted a Quotation for Service by signing and returning the Quotation to **ELEOS**.

"ELEOS" means Eleos Web Private Limited, which term shall include its successors and permitted assigns.

"IP" means Internet Protocol.

"Minimum Contract Term" for the Service shall be indicated in the Quotation and in the absence of any such indication shall be for a minimum period of 12 calendar months unless stated otherwise.

"Person" includes individual, partnership, corporation and unincorporated association.

"Price" refers to one time set-up charge and monthly recurring service charge in respect of each Service as more particularly set out in the Quotation.

"Quotation" means a quotation in writing for Service from **ELEOS** to the Customer setting out details of the Service being offered and other terms and conditions such as the Minimum Contract Term and Price.

"User Code" means the unique identification code assigned by **ELEOS** to the Customer to allow the Customer to access the Service.

"Service" means the provision of technical services or other IP-based services, including the provision of Internet access, co-location and hosting of servers, provision of setup of licenses on behalf of, provision of email and any other value-added services as may be offered from time to time by **ELEOS**, as more particularly set out in the Quotation.

“Software” means the provision of the software owned or resold by ELEOS to the customer.

“VPN” means Virtual Private Network.

1.2 The clause headings are used for reference only.

2. Service

2.1 ELEOS agrees to provide the Service and/or Software to the Customer pursuant to the terms of this Contract. Usage of the Software is governed by the terms of Use listed in Appendix A.

2.2 Unless otherwise indicated in the Quotation, the Customer shall be responsible to arrange at its own expenses for the ordering of and the provision of the necessary terminal equipment for the purpose of gaining access to the Service not limited but including the provision of internet.

3.0 Minimum Contract Term

3.1 The Customer agrees to subscribe for the Service for the Minimum Contract Term and agrees not to terminate the Contract without cause.

3.2 If the Customer continues to use the Service after the expiry of the Minimum Contract Term, the Contract shall be deemed to continue on a month to month basis until terminated in accordance with Clause 8 (Termination of Service).

4.0 Changes in Service

4.1 If the Customer wishes to change the Service by way of service upgrade or modification, it shall notify **ELEOS** of its intention in writing. If **ELEOS** is able to accede to the request made by the Customer, **ELEOS** shall endeavour to implement the service upgrade within the next possible opportunity or such other dates as **ELEOS** may be in agreement with the Customer.

5. Customer's Obligations

5.1 The Customer undertakes to use the Service in accordance with such conditions as may be notified in writing to the Customer by **ELEOS** from time to time.

5.2 The Customer shall strictly adhere to:-

- (i) Any and all applicable Singapore laws relating to the Service, and
- (ii) Such code of practice, regulations, guidelines, instructions that the Authorities may issue from time to time relating to the Service.

5.3 Without limitation to the generality of the foregoing, the Customer undertakes not to use the Service:

- (i) For any illegal or improper purpose or for the purpose of sending any message which is abusive or offensive or abusive or of an obscene or immoral nature;

(ii) To post or transmit any programme or software which contains a virus, worm, or other harmful element;

(iii) For any purpose or programme that is against the public interest, public order, national or religious harmony;

(iv) To copy, upload, post, publish, transmit, reproduce, or distribute in any way or manner whatsoever, information, software, or other material which is protected by copyright or other proprietary right, without obtaining permission of the copyright owner;

(v) To gain access to any computer system or resources connected to Internet without the prior authorisation by the rightful owner;

(vi) In contravention of the Internet Code of Practice, any regulations, guidelines, instructions that the Authorities may issue from time to time relating to the Service;

(vii) To access confidential or proprietary information or database unless permission to do so has been granted by the rightful owners or holders; or

(viii) Otherwise in a manner which constitutes a violation or infringement of the rights of any person (including to rights of confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party.

5.4 **ELEOS** shall not be held responsible for any data retrieved, stored or transmitted through the Service by the Customer.

5.5 The Customer shall, when required by **ELEOS**, the Authorities or any other regulatory bodies assist in any investigation into any alleged violation of any law or regulation in relation to the use of the Service.

5.6 The Customer shall ensure that all Authorised Users of the Service shall strictly comply with and observe the terms and conditions of this Contract and acknowledge that it shall be solely liable for and shall indemnify and keep indemnified, **ELEOS** against any losses, damages, expenses, claims, suits or proceedings whatsoever and howsoever arising, which **ELEOS** may suffer directly or indirectly by reason of a non-observance of any one or more terms and condition of this Contract by the Customer or its Authorised Users.

6. User Codes and Internet Resources

6.1 **ELEOS** shall assign a User Code to the Customer to allow the Customer access to the Service.

6.2 **ELEOS** shall have the absolute discretion to change the User Code and forthwith assign a new User Code to the Customer where **ELEOS** has reason to believe the User Code has been compromised and/or used by a third party without the knowledge, consent, permission of the Customer.

6.3 **ELEOS** shall have the right to cancel the User Code:

(i) Upon the termination of this Contract; or

(ii) Where in the reasonable opinion of **ELEOS** the Customer has breached its obligations under this Contract.

6.4 The Customer shall take all such measures as may be necessary (including but not limited to changing its password from time to time) to protect the secrecy of its User Code and/or password. The Customer shall keep the User Code secret and shall not reveal or disclose the User Code to any person except to its Authorised Users. The Customer agrees to indemnify **ELEOS** against all actions, proceedings, damages, costs, claims, demands or expenses which may be sustained or suffered by **ELEOS** arising out of or in connection with any unauthorized usage of the Service.

6.5 The Customer shall:

(i) Notify **ELEOS** immediately where there are grounds for suspecting or believing that a third party is using the User Code without the knowledge, consent or permission of **ELEOS**, the Customer or its servants, employees or agents; and

(ii) Be solely responsible for all charges incurred in respect of the Service when access to the Service is obtained through the use of any User Code, regardless of whether such use has been duly authorized or otherwise.

6.6 Any technical services, especially software for the purpose of servicing the customer allocated by **ELEOS** for access to the Service shall remain the property of **ELEOS**.

6.7 **ELEOS** shall have the right to restrict access to computer systems and information stored within the **ELEOS** network in a manner deemed appropriate by **ELEOS**.

6.8 **ELEOS** may, in its sole discretion, if it deems appropriate, vary, amend or suspend the Service or any part thereof including but not limited to the removal of content of web pages hosted on its servers and the blocking the transmission of emails through its network.

7. Charges and Payment

7.1 The Customer shall pay charges to **ELEOS** according to the Price indicated in the Quotation and/or Application Form or otherwise indicated in such tariff table as may be published by **ELEOS** from time to time.

7.2 **ELEOS** shall pro-rate the monthly recurring charge ("MRC") for the first month of Service and bill the first month's MRC together with any set-up fee or hardware cost in respect of the Service. The MRC for subsequent months shall be billed monthly in advance or the MRC may be rolled up in a annual bill.

7.3 All charges are due for payment within thirty (30) days from the date of issue of the invoice by **ELEOS**.

7.4 **ELEOS** will issue invoice to the Customer on a monthly basis or as and when needed. The statement of charges will reflect the prices, due date for payment, other terms and conditions and any other charges that have been disclosed to the Customer.

7.5 The Customer shall be liable for and shall pay the MRC or annual bill on demand notwithstanding that the Customer disputes the same for any reason. In the event that a dispute is decided by **ELEOS** in the Customer's favour, **ELEOS** shall refund to the Customer any excess amount paid by the Customer free of interest.

7.6 **ELEOS** shall be entitled to charge interest on all outstanding billed amounts under this Contract at the rate of one point five percent (1.5%) per month. Interest shall accrue daily on all outstanding amounts including accrued default interest from the due date until payment in full is received by **ELEOS** notwithstanding the termination of this Contract.

7.7 The Customer will be liable for and shall pay on demand to **ELEOS** any charges incurred by any unauthorised or illegal log-ins for any reason whatsoever unless it is caused by any gross negligence or wilful default on the part of **ELEOS**.

7.8 The Customer shall be solely responsible for all charges incurred through the use or purported use (whether authorised or not) of the Customer's account including without limitation internet roaming charges, local loop charges and charges imposed by third parties.

7.9 The Customer may request **ELEOS** to attend to a fault at the Customer's premises in respect of any Service failure or disruption. **ELEOS** reserves the right to impose reasonable charges as may be laid out accordingly for the site visit if it is subsequently determined that the fault is not directly attributable to any of **ELEOS**'s equipment or networks.

7.10 The Customer shall be responsible for all taxes, duties, levies, and other similar charges, arising out of or in connection with this Contract, including but not limited to, any tax which the Customer is required to withhold or deduct from payments to **ELEOS**, except any income tax imposed upon **ELEOS** by the Inland Revenue Authority of Singapore.

7.11 In the event that **ELEOS** is required to charge Goods and Services Tax ("GST") on the supply of the Services or anything incidental thereto, the Customer shall pay to **ELEOS**, in addition to any amount payable under this Contract, the amount of GST chargeable on the supply.

7.12 The Customer shall pay the billed amount by the due date notwithstanding any dispute on the charges levied. **ELEOS** will conduct a review of any dispute raised to **ELEOS** and provide a written response within fifteen (15) days of receiving such notification from the Customer. If the Customer is ultimately found liable for the payment, the Customer shall be liable to pay the disputed amount plus interest.

8. Termination of Service

8.1 The Customer may terminate the Service at any time after the expiry of the Minimum Contract Term by providing thirty (30) days prior written notice to **ELEOS**.

8.2 Notwithstanding Clause 8.1 above, **ELEOS** may terminate this Contract with immediate effect: -

- (i) If any monies payable by the Customer for the Service are not settled in full when they fall due;
- (ii) If in the reasonable opinion of **ELEOS**, the Customer has breached any of the terms or conditions of this Contract;
- (iii) If in the opinion of **ELEOS** or the Authorities, it is not in the public interest to continue providing the Service to the Customer for any reason whatsoever; or
- (iv) If the Customer enters into any compromise or arrangement with its creditors or a receiver or a receiver and manager is appointed over the whole or part of the undertaking of the Customer or

proceedings are taken for the appointment of an administrator of or the winding up of the Customer or the Customer becomes insolvent or ceases to carry on business.

8.3 In the event of termination of this Contract for whatsoever reason, without prejudice to any other remedies available to **ELEOS**, the Customer shall be liable for the MRC OR Annual Billing (pro rata) and charges up to and including the expiry date of the relevant Minimum Contract Term or the date of termination stated in the notice given in accordance with Clause 8.1, whichever is later.

9. Suspension of Service

9.1 Without prejudice to any other rights or remedies of ELEOS, ELEOS may at any time and in its sole discretion, suspend the Service or any other service provided by it without incurring any liability and for whatsoever reason including but not limited to;

(i) Where ELEOS suspects that the Customer's account has been compromised or accessed by an unauthorised person; or

(ii) Where any monies payable by the Customer for the Service or that other service are not settled in full when due.

9.2 Following such suspension, the Service shall be deemed to be terminated as from the date of suspension stipulated by ELEOS and the Customer shall be liable for all charges and fees incurred up to and including the date of such suspension. If the Minimum Contract Term has not expired, the Customer shall additionally be liable for the charges up to the end of the relevant Minimum Contract Term.

9.3 ELEOS may, at its sole discretion and subject to such terms and conditions as it deem appropriate, reconnect the Service in which event this Contract shall continue as if the same has not been terminated.

10. Disclaimer

10.1 **ELEOS** gives no warranty in respect of any hardware or software provided to the Customer and shall not be liable to the Customer for any cost, claim, liability, expense, demand or damages whatsoever (including any loss of profits, lost savings or incidental or consequential damages) arising out of the Customer's use of or inability to use such hardware or software, even if **ELEOS** or any of its authorised representatives has been advised of the possibility of such damages, or for any claim by any other person whatsoever.

10.2 Any condition or warranty which may be implied or incorporated within this Contract by statute or law (including warranties as to quality and fitness for purpose) is hereby expressly excluded. **ELEOS** shall not be liable for any loss of information howsoever caused whether as a result of any interruption, suspension, or termination of the Service or otherwise, or for the contents, security, accuracy or quality of information available, received or transmitted through the Service.

10.3 **ELEOS** shall not be liable for any loss (whether direct, indirect, incidental, special or consequential) or damages sustained by reason of the Customer's use or inability to use the Service.

10.4 **ELEOS** makes no warranty regarding any hardware, software or services purchased or obtained through the Service or any transactions entered into through the Service.

11. Indemnity

11.1 The Customer shall indemnify and hold **ELEOS** harmless at all times against all actions, proceedings, costs, claims, expenses (including legal costs), demands, liabilities, losses (whether direct, indirect or consequential) and damages (whether in tort, contract or otherwise) whatsoever including without limitation claims made by third parties and claims for defamation, infringement of intellectual property rights, death, bodily injury, wrongful use of computers, unauthorised or illegal access to computers, property damage or pecuniary losses howsoever arising which **ELEOS** may sustain, incur, suffer or pay arising out of, in connection with or pursuant to this Contract or the use of the Customer's account whether authorised or not authorised or the use of the Service by the Customer or any act or omission of the Customer thereof.

12. Confidentiality

12.1 The Customer shall not divulge, use or exploit any confidential information which may or may have come to his or its knowledge by reason of or in connection with this Contract, and shall use all reasonable efforts to prevent its employees, officers, agents and consultants from so acting, except with the prior written consent of **ELEOS** or where required to be disclosed pursuant to any applicable law or legal process used by any court or the rules of any relevant regulatory body.

12.2 **ELEOS** agrees not to disclose or communicate to any third party any confidential information which have come to its knowledge by reason of or in connection with this Contract, except with the prior consent of the Customer or where required for the purpose of:

- (a) Planning, provisioning and billing for technical services or equipment to be provided by **ELEOS**;
- (b) Managing bad debt;
- (c) Fraud prevention;
- (d) Disclosure as required by law or the rules of any relevant regulatory body.

12.3 **ELEOS** agrees not to make use of any information gathered from the Customer for the purposes of direct marketing of goods or services provided by any third party.

13. Force Majeure

13.1 **ELEOS** shall not have any liability for any delay or default in the performance of its obligations under this Contract caused by circumstances beyond its control and without the wilful default or gross negligence of **ELEOS** including but not restricted to acts of God, acts of the public enemy, decrees by governmental authorities, strikes, war, riots, insurrections, civil commotion and other causes of such nature. In the event of any force majeure event, **ELEOS** shall for the duration of such event, be relieved of any such obligation under this Contract as is affected by such an event.

14. Assignment

14.1 Rights or liabilities under this Contract may not be assigned, transferred or otherwise disposed by the Customer to any party without the prior written consent of **ELEOS**.

15. Variation

15.1 ELEOS reserves the right to change the terms and conditions contained herein at any time upon written notice to the Customer. The Customer agrees that notice by the posting on ELEOS's website shall be deemed to be sufficient written notice for the purpose of this Clause.

15.2 Without limitation to the generality of the foregoing, any provision of this Contract may be varied, supplemented or amended only if ELEOS so agrees in writing.

16. Waivers

16.1 Any provision of this Contract may be waived only if ELEOS so agrees in writing provided that such waiver may be given subject to conditions thought fit by ELEOS and shall be effective only in the instance and for the purpose for which it is given.

16.2 No failure on the part of ELEOS to exercise, and no delay on its part in exercising, any right or remedy under this Contract shall operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof.

16.3 The rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).

17. Severability

17.1 If any provision in this Contract is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed to the fullest extent allowed by law so as to render the provision valid and enforceable, and if no such construction is possible, the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect and the parties to this Contract shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or Contract which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18. Entire Contract

20.1 This Contract including the Quotation, the Application Form embodies the entire understanding between the parties and there are no promises, terms, conditions or obligations, oral or written expressed or implied other than those contained herein.

19. Notice

19.1 Subject as otherwise provided in this Contract, all notices, demands or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by prepaid post or by courier service or by facsimile to the address or facsimile number set out in the Quotation or Application Form (or to such other address or facsimile number as the Customer or ELEOS may from time to time notify the other for the purposes of this Contract).

19.2 Any notice, demand or communication from the Customer shall not be effective until actually received by **ELEOS**. Any notice, demand or communication from **ELEOS** to the Customer shall be deemed to have been duly served: -

(i) If sent by facsimile transmission, on the day of despatch;

(ii) If sent by courier or delivered personally, when left at the address specified in clause 21.1 above;
and

(iii) If sent by prepaid mail, within two (2) days of despatch and in proving the same it shall be sufficient to show an acknowledgement of receipt issued by the post office in Singapore.

19.3 No communication from the Customer may be effected by email or any other electronic media without the prior written consent of **ELEOS** and shall not be deemed received by **ELEOS** until such electronic communication has actually been received by **ELEOS** in a format readily decipherable.

20. Governing Law

20.1 This Contract shall be construed in accordance with the laws of Singapore and the parties shall submit to the non-exclusive jurisdiction of the courts of Singapore in the event of any dispute.

Appendix A – Grant of Use of Licensed and subscribed Software

1. GRANT OF LICENSE/SUBSCRIPTION

You are not permitted to install or run the software product ('the Software') or use the user manuals and other documentation ('the Manuals') supplied to you without the permission of ELEOS WEB Pte Ltd ('the Owner') of Block 19 Kim Keat Road #04-07 Fu Tsu Building Singapore 328804. In consideration of your agreement to the terms of this agreement the Owner grants you, the individual or entity whose name and address appears on the Registration Card completed for this copy of the Software, a non-exclusive right ('the License') to install and run the Software and use the Manuals as permitted by this Agreement. All references to the Software mean the object code only of the program(s) comprising the Software. If you are a subscriber to our services, ELEOS grants you the right to use as long as the subscriber continues his subscription.

YOU ARE PERMITTED TO:

- 1.1 use the Software and Manuals in connection with a single computer. If you wish to use the Software on more than one computer, you must obtain a separate license for another copy of the Software;
- 1.2 load the Software and use it only on a single computer which is under your control;
- 1.3 transfer the Software from one computer to another provided that the Software is installed and used on only one computer at a time;
- 1.4 make a back-up copy of the Software in support of your permitted use of the Software provided you label the back-up copy with the Owner's copyright notice. Any other copies of the whole or any part of the Software are unlawful;
- 1.5 use the Software for your personal use or in your business or profession permitting unauthorized access to, copying or use of the Software and Manuals is a breach of this Agreement;
- 1.6 transfer the Software and Manuals and your License on a permanent basis to another person only if that person agrees to accept the terms of this Agreement and you either transfer all copies (including the most recent update and all prior versions) to that person or destroy any copies not transferred. If you transfer possession of any copy of the Software to another person, your License is automatically terminated.

YOU MAY NOT PERMIT OTHERS TO:

- 1.7 use, copy of transfer the Software except as permitted by this Agreement;
- 1.8 distribute, rent, loan, lease, sub-license or otherwise deal in the Software and Manuals;
- 1.9 copy the Manuals in any manner;
- 1.10 alter, adapt, merge, modify or translate the Software or the Manuals in any way for any purpose, including, without limitation, for error correction;
- 1.11 reverse-engineer, disassemble or decompile the Software except that you may decompile the Software only to the extent permissible by law where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Software or with another program and such information is not readily available from the Owner or elsewhere;
- 1.12 remove, change or obscure any product identification or notices of proprietary rights and restrictions on or in the Software and Manuals.

2. TERM AND TERMINATION

- 2.1 The License will continue until terminated. You may terminate it at any time by destroying the Software and Manuals together with all copies in any form;
- 2.2 Your License to use the Software and Manuals will terminate automatically if you fail to comply with any term of this Agreement. The License will also terminate without further action or notice by the Owner if you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative, administrative receiver or receiver appointed or suffer or file any similar action in consequence of debt.
- 2.3 Upon termination of the License for any reason you will destroy the Software and Manuals together with all copies in any form, including copies on your hard and back-up disks. Any use of any copies of the Software or Manuals after termination of the License is unlawful.

*** ** NEXT *** **

3. LIMITED WARRANTY

The Owner warrants only to you, as the original Licensee, that:-

- 3.1 the Software when used properly will provide the functions and facilities as described in the user and/or video manual supplied for the Software; and
 - 3.2 the media on which the Software is recorded will be free from defects in material and workmanship under normal use.
- The Owner's entire liability and your exclusive remedy under the warranties given in this section 3 will be, at the Owner's option, to either:-
- 3.3 repair or replace the Software or media which does not conform with the warranty or
 - 3.4 refund the price paid for the Software and terminate the License.
- This remedy is subject to the return of the Software with a copy of your payment receipt to [your supplier or the Owner] not later than [5] days after the end of a period of [15] days from the date of your receipt of the Software.

4. EXCLUSION OF OTHER WARRANTIES

Except for the express warranties in section 3, the Owner and its suppliers make and you receive no other warranties, conditions, conditions or representations, express or implied, statutory or otherwise, and without limitation the implied terms of merchantability and fitness for a particular purpose are excluded. The Owner does not warrant that the operation of the Software will be error free or uninterrupted. It is your responsibility to ensure that the Software is suitable for your needs and the entire risk as to the performance and results of the Software and Manuals is assumed by you.

5. DISCLAIMER

5.1 In no event will either the Owner or its suppliers be liable for any direct, consequential, incidental, or special damage or loss of any kind (including without limitation loss of profits, loss of contracts, business interruptions, loss of or corruption to data) however caused and whether arising under contract, tort, including negligence, or otherwise.

5.2 If any exclusion, disclaimer or other provision contained in this Agreement is held invalid for any reason and the Owner becomes liable for loss or damage that could otherwise be limited, such liability, whether in contract, negligence or otherwise, will not exceed the amount actually paid by you for the Software.

5.3 You acknowledge that the allocation of risk in this Agreement reflects the price paid for the Software and also the fact that it is not within the Owner's control how and for what purposes the Software is used by you.

5.4 The Owner provides the Software and support services(if any) AS IS AND WITH ALL FAULTS and hereby disclaim all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Software, and the provision of or failure to provide support or other services, information, software, and related content through the Software or otherwise arising out of the use of the Software. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE SOFTWARE

6. GENERAL

6.1 This Agreement is the entire agreement between you and the Owner and supersedes any other oral or written communications, agreements or representations with respect to the Software and Manuals.

6.2 Nothing in this Agreement will affect the statutory rights of a consumer in 'consumer transactions' under any applicable statute.

*** ** END *** **

INITIAL: _____