

Master Services Terms and Conditions (JOS-ITS-2018)

This agreement (“**Agreement**”) consists of (1) these Master Services Terms and Conditions and (2) the terms and conditions of any Service Agreements that are executed by the parties from time to time. By executing any Service Agreement, the Customer acknowledges that it has read, understood and agreed to these Master Services Terms and Conditions as well as the relevant Service Agreement(s).

The Customer and JOS agree to the provision and use of the Services on the following terms and conditions:

1. **The Services**

1.1 JOS shall provide the Customer with the Services in accordance with the relevant Service Agreement.

1.2 The agreement to provide any Services shall only be binding on the parties when the relevant Service Agreement has been executed by them both, after which that Service Agreement shall form an integral part of the Agreement.

2. **Commencement and Duration**

2.1 These Master Services Terms and Conditions shall come into effect on the effective date of the first Services Agreement. The period for the performance of each of the Services (the “**Service Term**”) and the date on which that Service Term expires (the “**Expiry Date**”) shall be as stated in the relevant Service Agreement.

2.2 Each Service Term shall be automatically renewed at the relevant Expiry Date, unless the relevant Service Agreement is terminated by written notice given by either of the parties at least 30 days in advance of that Expiry Date (such notice to expire on the last day preceding the Expiry Date) or as otherwise provided in the relevant Service Agreement. The termination of any individual Service Agreement shall only affect the Services covered by that Service Agreement.

2.3 The Agreement shall terminate automatically upon the termination or expiration of the last remaining Service Agreement.

3. **Charges**

The charges for the Services shall be specified in the relevant Service Agreement. These charges shall not be refundable under any circumstances. JOS shall be entitled to modify these charges on any renewal pursuant to Clause 2 by giving the Customer written notice at least 30 days in advance. Such modification shall be deemed accepted by the Customer upon the renewal.

4. **Invoicing and Payment**

4.1 Unless otherwise specified in the relevant Service Agreement, the Customer shall settle all payments within 30 days of invoice’ date. All payments will be invoiced and made in Hong Kong dollars. All payments under the Agreement shall be due and payable without setoff.

4.2 Amounts remaining unpaid after the due date shall bear interest from the due date until the date payment is made in full at a rate of 2% per month (or pro-rata for each day).

4.3 In the event of late payment of any amount due, JOS reserves the right to suspend the provision of any Services. Any extra costs incurred by JOS arising from the suspension and any resumption of the Services may be added to the amounts due to JOS.

5. **Taxes and Tariffs**

All charges stated in any Service Agreement or any invoice are exclusive of taxes or tariffs and the Customer agrees to pay such taxes and tariffs based upon or charged in connection with the Services or the Customer’s use of the Services.

6. **Termination and Consequences of Termination or Expiry**

6.1 JOS may terminate any Service Agreement (without payment of compensation or other damages caused to the Customer by such termination) at any time by giving not less than 3 months’ notice in writing, or immediately at any time by giving the Customer notice in writing if any of the following events occur:

- (a) any charge payable by the Customer is not paid within 15 days of its due date for payment under the Agreement;
- (b) the Customer commits a breach of the Agreement which is incapable of remedy;
- (c) the Customer fails to remedy a breach of the Agreement, which is capable of remedy (other than non-payment of

charges), within 15 days of receipt of written notice to do so from JOS;

- (d) the Customer ceases, or threatens to cease, to carry on its business, is unable to pay its debts or if an order is made or a resolution passed for the liquidation, administration, winding-up or dissolution of the Customer or an administrative or other receiver or similar officer is appointed over all or any of the assets of the Customer or the Customer enters into or proposes any composition or arrangement with its creditors generally (or if anything analogous to the foregoing occurs in any applicable jurisdiction);or
- (e) if any Force Majeure Event prevents a party from performing any of its obligations under the Agreement for 30 days,

and in the event of any termination the Customer shall immediately pay any and all outstanding amounts owed to JOS.

6.2 The termination or expiry of the Agreement or any individual Service Agreement shall be without prejudice to any accrued rights or obligations of either party, including the payment of all charges by the Customer up to the date of termination or expiry, and to any other rights and remedies of either party at law.

6.3 All provisions of the Agreement or any individual Service Agreement that are intended to survive its termination or expiry shall do so.

7. **Limitation of Liability**

7.1 No limitation of liability in the Agreement shall apply where such limitation is not permitted by statute (including any limitation of liability for death or personal injury due to negligence, wilful or reckless misconduct or fraudulent misrepresentation).

7.2 JOS shall only be liable for loss of or damage to real property or tangible personal property where such loss or damage results from the negligence of JOS, its employees, subcontractors or agents. Such liability shall be limited to the then-current replacement value of such property (excluding lost records or data), or the total charges payable by the Customer under the relevant Service Agreement (whichever is the lesser amount).

7.3 JOS’ total liabilities for any direct loss or damage not governed by Clause 7.2 arising from the negligence of or breach of the Agreement by JOS, its employees, subcontractors or agents, whether arising from one event or a series of related events, shall not exceed (a) HK\$780,000, (b) the total charges paid by the Customer for the twelve (12) months preceding the event giving rise to such liabilities or (c) the total amount payable by the Customer under the relevant Service Agreement (whichever is the lesser amount).

7.4 There are no warranties, terms, conditions or obligations, oral or written, expressed or implied other than those contained in the Agreement (including any implied warranties as to quality or fitness for purpose). In particular, JOS makes no representation and gives no warranty of any kind that the Services shall be uninterrupted, error-free or completely secure, or that the information received by the Customer through the Services shall be accurate and complete. No oral or written information or advice in connection with the Services given by JOS, its employees, subcontractors or agents shall be deemed to create any warranty or obligation.

7.5 Subject to Clause 7.1 under no circumstances shall JOS be liable, whether in contract, tort or otherwise (including negligence), for:

- (a) any indirect, consequential or economic loss or damage (including loss of revenue, profits, business, contracts, anticipated savings or goodwill) in connection with the Services or the Agreement, even if such loss was reasonably foreseeable or if JOS had been advised of the possibility of the Customer incurring such loss or damage;
- (b) any loss or damage suffered by the Customer as a result of an action brought by a third party (other than loss or damage covered by Clause 7.2);
- (c) any loss of, or damage to, the Customer’s records or data;
- (d) any failure to observe or comply with its obligations under the Agreement as a result of the failure by the Customer to observe or comply with its obligations under the Agreement; or
- (e) any act, omission or negligence of any third person in connection with the Services (excluding any subcontractor of JOS), including the provision of equipment, transmission facilities, software or Internet services to the Customer (and JOS makes no representation and gives no warranty of any

- kind in this regard) or any unauthorised access or alteration to, or theft or destruction of the Customer's equipment, facilities, software or data.
- 7.6 In addition to damages for which the Customer is liable under law and the terms of the Agreement, the Customer shall indemnify JOS, its employees, subcontractors or agents against all loss or damage arising from any claim by a third person against each or any of them (including regarding statements, representations, or warranties not authorised by JOS) in connection with the Customer's use of the Services.
- 7.7 No action, regardless of form, arising out of this Agreement may be brought by the Customer more than two years after the cause of action has arisen.
- 7.8 The parties agree that the charges for the Services reflect this allocation of risks.
8. **Safety**
JOS shall inform the Customer if in JOS' opinion the provision of any of the Services at any time would involve a safety hazard. JOS shall not be responsible for a failure to provide such Services in these circumstances.
9. **Data Protection**
Each party shall comply with all provisions applicable to that party under the Personal Data (Privacy) Ordinance and any similar legislation or regulations in any other jurisdiction in which its obligations are performed to the extent that it relates to the Services. Each party shall indemnify the other against all losses that the other party may incur arising out of any breach of this Clause.
10. **Confidentiality and Publicity**
10.1 Neither party shall use or disclose the other party's Confidential Information (including the existence and terms of any part of the Agreement) save for the purposes of the proper performance of the Agreement or with the prior written consent of the other party.
10.2 The Customer acknowledges that JOS may wish to use the Customer's name in press releases, product brochures and financial reports indicating that the Customer is a customer of JOS, and agrees that JOS may use its name in such a manner.
11. **Non-Solicitation**
11.1 The Customer agrees that it shall not, without the prior written consent of JOS, during the term of the Agreement and for a period of 12 months after its expiry or termination, solicit or endeavour to entice to leave the service or employment of JOS any employee of JOS who is or was involved in any of the Services with a view to that person providing services to the Customer or any other person.
11.2 The Customer hereby expressly agrees that if the Customer is in breach of Clause 11.1 and employ any employee of JOS within the specified period, the Customer shall be liable to pay JOS, as compensation, a sum equivalent to the annual salary of the employee whom the Customer employs. Notwithstanding the foregoing, JOS shall also be entitled to claim against the Customer for any damages suffered by JOS as a result thereof and/or equitable remedy, including but not limited to specific performance and injunction and any other enforcement proceedings as deemed fit by JOS, with costs against the Customer on a full indemnity basis.
12. **Compliance Review**
12.1 The Customer agrees to provide JOS and/or its representatives with relevant records on request, and access to its premises on reasonable notice during normal business hours, to enable JOS to review the Customer's compliance with the Agreement. The Customer agrees to allow the reproduction and retention of copies of those records.
12.2 If it is determined that the Customer has materially breached the terms of the Agreement, in addition to JOS' rights under law and the terms of the Agreement, for transactions that are the subject of the breach, the Customer agrees to refund the amount equal to the discount (or fee, if applicable) JOS gave for the relevant Services or JOS may offset any amounts due to the Customer.
13. **Assignment**
The Customer may not assign, novate, subcontract or otherwise transfer the Agreement or any or all of its rights and/or obligations under the Agreement without the prior written consent of JOS. In giving such consent, JOS shall be entitled to impose such fees, terms or conditions as it determines in its absolute discretion. JOS is entitled to assign, novate, sub-contract or otherwise transfer the Agreement or any or all of its rights and/or obligations under the Agreement without the prior consent of the Customer.
14. **Force Majeure**
14.1 Neither JOS nor the Customer shall be under any liability for any loss or damage resulting from any delay or failure to perform the Agreement either in whole or in part where such delay or failure is due to a Force Majeure Event, provided that this Clause shall not excuse either party from paying any sum to the other when it becomes due.
15. **Notices**
15.1 All written notices, requests, demands and other communications under the Agreement shall be given by letter, fax or e-mail (to the extent permissible under Hong Kong law as a notice in writing) to the relevant contact at the relevant party's address, fax number or e-mail address as specified in the Service Agreement(s) (as may be amended from time to time by notice to the other party in accordance with this Clause).
15.2 Any such notice, request, demand or communication shall be deemed to have been duly served (if given or made by fax or e-mail) immediately or (if given or made by letter) 2 Business Days after posting. For e-mails, an identification code (a "user ID") contained in an electronic document shall be sufficient to verify the sender's identity and the document's authenticity.
16. **Independent Parties**
JOS and the Customer are independent contractors and nothing contained in the Agreement shall be construed as creating a partnership, franchise, joint venture, agency or employer/employee relationship. The Customer is not the agent of JOS for any purpose and shall not have the right, power or authority to create any obligation or duty, express or implied, on behalf of JOS or make any representations or warranties, express or implied, about JOS.
17. **Waiver**
No failure or delay on the part of either party to exercise any right, power, discretion or remedy under the Agreement, nor any single or partial exercise by either party of such right, power, discretion or remedy, shall operate as a continuous waiver thereof. The rights, powers and remedies provided in the Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
18. **Invalidity**
If any provision of the Agreement, in whole or in part, is or becomes (whether or not pursuant to any judgment or otherwise) illegal, invalid or otherwise unenforceable it shall not effect the legality, validity or enforceability of the remainder of the Agreement, which shall continue in full force and effect, and such provision or part thereof shall be deleted from the Agreement.
19. **Language**
If any part of the Agreement is translated into another language, the English version shall prevail if there is any discrepancy.
20. **Costs**
Each party shall bear its own costs incurred by it in connection with the preparation, negotiation and entry into the Agreement and the documents to be finalised into pursuant to it.
21. **Amendment**
Unless expressly provided otherwise in the Agreement, any amendment to any terms of the Agreement shall only be effective if agreed in writing and signed by authorised representatives of the parties. Additional or different terms in any written communication from the Customer (including an order) shall be of no effect and no conduct by JOS shall be deemed to constitute acceptance of any such additional or different terms. Notwithstanding the foregoing, JOS may from time to time notify the Customer in writing of any revised conditions of service required in accordance with any laws, rules and regulations of any relevant administrative authority.
22. **Counterparts**
The Agreement, including any Service Agreement, may be executed in counterparts which together shall constitute one agreement.
23. **No Third Party Beneficiaries**
The Agreement is solely for the benefit of the parties and shall not be deemed to confer any rights or remedies upon any other person.
24. **Entire Agreement**
The Agreement embodies the entire understanding between the parties with respect to its subject matter and supercedes all prior and contemporaneous agreements, arrangements or understandings.
25. **Governing Law and Submission to Jurisdiction**
The Agreement shall be construed in accordance with the laws of Hong Kong and, unless and to the extent that the parties agree (in a Service Agreement or otherwise in writing) to an alternative method of resolving any dispute arising out of or in connection with the

Agreement, the parties submit to the exclusive jurisdiction of the courts of Hong Kong.

26. **Interpretation**

26.1 Unless otherwise specified, if any conflict or inconsistency arises between any of the terms or conditions of the Agreement the order of priority shall be: the relevant Service Levels; the relevant Service Terms and Conditions; the Master Services Terms and Conditions.

26.2 Any order of priority amongst the Service Agreements shall be as stated in the relevant Service Agreements.

26.3 In the Agreement words importing the singular include the plural and vice versa. References to a “**person**” shall include an individual, partnership, corporation, unincorporated association, joint venture or other entity or a government and/or competent authority or any agency or department. References to any statute or statutory provision shall include any statute or statutory provision which amends or replaces, or has amended or replaced, it. References to Clauses are, unless otherwise stated, to clauses of these Master Services Terms and Conditions. Clause headings are for convenience only and shall not affect the construction of the Agreement. The terms and conditions set out in the schedule(s) to any Service Agreement are incorporated into and form an integral part of that Service Agreement.

26.4 A reference to a word, phrase or acronym not otherwise defined in the Agreement that has a meaning commonly understood by persons knowledgeable in the business of information technology shall have that meaning.

27. **Relocation Right**

JOS reserves the right to relocate Data Centre at any time during the Service Term by giving not less than six (6) months’ advance notice to the Customer. In such event, JOS is responsible for all relocation and setup costs at its own expenses.

28. **Replacement Right**

JOS reserves the right to replace JOS’ staff, contractors or subcontractors for performing the Services at any time during the Service Term without giving notice to the Customer.

29. **Title and Risk**

Except as otherwise stated in the relevant Service Agreement, title to all equipment and other tangible property provided by JOS in order to supply the Services shall at all time remain with JOS. Title to and risk in all equipment and other tangible property provided by the Customer to enable JOS’ performance of the Agreement shall remain with the Customer, who must ensure such equipment and property are adequately insured.

30. **Intellectual Property Rights**

(a) Except as otherwise stated in the relevant Service Agreement, all Proprietary Materials of the Customer, whether existing before or after the effective date of the first Services Agreement, that are made available to JOS under the terms of the Agreement are owned exclusively by the Customer or its licensors. All Intellectual Property Rights in and to such Proprietary Materials shall be and remain the sole property of the Customer or its licensors.

(b) Except as otherwise stated in the relevant Service Agreement, all Proprietary Materials of JOS, whether existing before or after the effective date of the first Services Agreement, are owned exclusively by JOS or its licensors. All Intellectual Property Rights in and to such Proprietary Materials shall be and remain the sole property of JOS or its licensors.

31. **Customer’s obligations**

The Customer shall:

(a) provide JOS with full and free access to the Customer’s equipment (“**Customer Equipment**”) to enable JOS to perform the Services or any matter related thereto;

(b) provide an environment as JOS may from time to time reasonably consider appropriate, suitable and satisfactory for the installation or operation or continued operation of the Customer Equipment;

(c) make such changes, modification, alteration or improvement to, in or of the environment or the Customer Equipment as JOS may from time to time reasonably require or specify;

(d) properly use, operate, keep, care and clean the Customer Equipment in accordance with the instruction, directions, recommendations or requirements as JOS may from time to time specify.

It is the Customer’s responsibility to ensure that any and all copyright works (including software) which it possesses or uses for whatever purpose are not infringing copies under the applicable laws and regulations and that the Customer has obtained all relevant licences to possess or use such works. No liability is accepted by JOS for any claims against or losses by the Customer of any kind arising under the applicable laws and regulations in connection with any software in the possession of or used by the Customer at any time, and the Customer agrees to indemnify JOS on demand against all such claims or losses.

33. **Definitions**

“**Business Day**” means any day other than a Saturday, Sunday or public holiday in Hong Kong.

“**Confidential Information**” means any oral, written or electronic data and information in existence during the term of the Agreement relating to the business and management of either party and to which access is granted or obtained by the other party, but does not include any data or information which (1) was known to the recipient prior to the disclosure to it by the other party; or (2) was or is independently developed by the recipient; or (3) is subsequently lawfully obtained by the recipient from a third party, without breach of the Agreement by the recipient; or (4) becomes publicly available other than through a breach of the Agreement; or (5) the other party has provided its prior written consent to such disclosure by the recipient; or (6) is or is required to be disclosed by legal requirement.

“**Data Centre**” means 12th Floor, Tower 2, Ever Gain Plaza, No. 88 Container Port Road, Kwai Chung, New Territories, Hong Kong or such other premises as designated by JOS from time to time.

“**Force Majeure Event**” means an event beyond a person’s reasonable control, including war, the threat of war, riots or other acts of civil disobedience, insurrection, acts of God, restraints imposed by governments or any other supranational legal authority or any other industrial or trade disputes; failure or shortage of power supplies or materials; computer virus; fires, explosions, storms (including when a Typhoon No.8 (or above) or black rain signal, or any other weather signal which means that road usage is unsafe and/or public transportation inaccessible, is hoisted), floods, lightning, earthquakes and other natural calamities. A Force Majeure Event affecting any of JOS’ sub-contractors or agents shall be deemed to be a Force Majeure Event.

“**Hong Kong**” means the Hong Kong Special Administrative Region.

“**including**” shall be deemed to mean “including, without limitation”.

“**Intellectual Property Rights**” means patents, trade marks, service marks, trade names, design rights, copyrights, database rights, rights in know-how and other intellectual property rights of whatever nature arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights.

“**parties**” means JOS and the Customer, and “**party**” shall be construed accordingly.

“**Proprietary Materials**” means any work product, software (including programming code such as source code and object code), systems, data modules, tools, methodologies, programs, analysis frameworks, specifications, reports, drawings or documentation, solution construction aids, or any other forms of tangible or intangible property owned or licensed by or on behalf of the relevant party. Proprietary Materials also means any revision, modification, translation, abridgment, condensation, upgrade, error correction or other adaptation or other change to the Proprietary Materials.

“**Service Levels**” means the service levels and parameters for the Services, as described in the relevant Service Agreement (or any schedule to it).

“**Service Terms and Conditions**” means the additional terms and conditions specific to the Services, as described in the relevant Service Agreement.

“**Services**” means the services to be provided by JOS to the Customer under the Agreement, as described in the relevant Service Agreement (or any schedule to it).

“**Service Agreement**” means a document that describes the relevant Services, Service Levels and Service Terms and Conditions.