

## STONEROAD LIMITED

### GENERAL TERMS AND CONDITIONS OF SERVICE

#### 1 Application

This document details the terms and conditions for the provision of Services by Stoneroad. The Customer is deemed to have accepted the Conditions when applying for the Services.

#### 2 Definitions and Interpretation

2.1 Unless the context says otherwise:

"Application" means a request for Services made by the Customer which is written by signing a Proposal, a Quotation or a Purchase Order.

"Conditions" means the terms and conditions in this document namely clauses 1 to 13 (both inclusive).

"Contract" means the agreement between the Customer and Stoneroad for the provision of Services comprising these Conditions, the Application and any policies or user guides issued and revised by Stoneroad from time to time.

"Customer" means any person, firm or entity (a) which has applied for a Service; (b) which has used the Service, but has not applied for that Service; or (c) as stated in the Application.

"Equipment" means equipment (including software relating thereto) which is provided by Stoneroad for the provision of a Service to the Customer and which is installed at the Customer's premises, excluding the Customer's equipment or third party equipment.

"Special Conditions" means the special terms and conditions (if any) set out in the Application which are applicable to the Services.

"Stoneroad" means Stoneroad Limited and includes any of its successors, transferees or assignees.

"Stoneroad's Standard Business Hours" means 9:00 am to 5:30 pm Monday to Friday excluding gazetted public holidays in Hong Kong.

2.2 Unless the context says otherwise:

- (a) A reference to a clause is a reference to a clause of these Conditions.
- (b) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) The singular includes the plural and conversely.
- (d) Headings to clauses are used for convenience of reference only and do not form a part of the clauses.
- (e) If there is a conflict between the Conditions (excluding the Special Conditions) the Conditions will prevail to the extent of the conflict. If there is a conflict between the Conditions and the Special Conditions then the Special Conditions will prevail to the extent of the conflict.
- (f) Any correspondence which is required to be given in writing can be given by prepaid post, facsimile transmission or email.
- (g) A reference to a "day" refers to a calendar day.

#### 3 Provision of Services

3.1 Where Stoneroad has accepted an Application from the Customer, Stoneroad will provide the Services subject to the terms of the Contract.

3.2 Stoneroad will endeavour to provide the Services subscribed by the Customer within a reasonable time or a time agreed with the Customer.

3.3 Stoneroad does not guarantee continuous provision of or fault free Services or performance at a particular speed, bandwidth or data throughput rate. In the event of a fault in the Service, the Customer shall immediately

notify Stoneroad. Stoneroad will determine the appropriate methods for providing the Services and the route along which a Service is delivered to the Customer. Stoneroad may change the method and delivery route from time to time without informing the Customer.

3.4 Stoneroad will repair faults that occur on a date agreed with the Customer unless otherwise provided, or if the Customer has entered into an alternative maintenance arrangement with Stoneroad. In some cases a temporary repair may be performed to enable the Customer to use the Service before permanent repair is effected.

#### **4 Use of Services**

4.1 The Customer shall use the Services in accordance with the terms and conditions of the Contract.

4.2 Subject to the Contract, the Customer may allow any person to use the Service provided that the Customer will remain liable to Stoneroad for all charges incurred thereby and for any and all liabilities or obligations arising under the Contract. The Customer shall be liable for all charges incurred through the use of the Service whether such charges were incurred with or without the consent of the Customer.

4.3 If the Customer vacates the premises at which the Service is provided without cancelling the Service, the Customer will be liable for any charges outstanding in respect of the use of the Services and any charges incurred in respect of the Services by any person who commences occupation of the premises or remains in occupation after the Customer has vacated the premises, or by any other person whom such person permits to use the Services.

4.4 The Customer must not use or permit another person to use the Service:

- (a) in connection with, or in, the commission of an offence against the laws of Hong Kong or other applicable laws;
- (b) for the purposes of resale or sublease of the Service, unless otherwise agreed by Stoneroad in writing;
- (c) in any manner which infringes any rights (including intellectual property rights) of any third party;
- (d) in any manner which interferes with, impedes or impairs the use or operation of, or do anything likely to interfere with, impede or impair the use or operation of the Services; or
- (e) for purposes not authorised by Stoneroad.

4.5 The Customer must:

- (a) permit or obtain the necessary permission to enable Stoneroad's employees or agents to enter any premises to inspect any apparatus, which is, or may be, causing or likely to cause, any interference or damage to the Service; and
- (b) provide Stoneroad with prior and sufficient advance notice in the case where the Customer uses or intends to use the Service at any time for the purpose of receiving or delivering relatively high volume of data, or otherwise in order to eliminate the interference, impedance or impairment or the likelihood of interference, impedance or impairment to the Service.

4.6 Other than to the extent that the losses or damages are contributed by Stoneroad, the Customer shall indemnify and hold harmless Stoneroad, its employees and agents against all claims, liability, losses or damages which Stoneroad suffers or incurs as a result of:

- (a) any acts or omissions of the Customer;
- (b) any claims by any person relating to the use of the Service, or its resupply, by the Customer;
- (c) a breach by the Customer of the Contract;
- (d) any illegal or unauthorised activity by the Customer;
- (e) any claims by any person in relation to the use of the Service by the Customer (including any claims for infringement of any intellectual property rights or any claims arising out of or relating to carrying material of obscene, indecent or defamatory nature); and

- (f) any injury or damage to property suffered by Stoneroad in the course of access to the Customer's designated premises for the purpose of supply of the Service.

## **5 Access to Premises**

5.1 The Customer must allow or obtain the required permission to enable Stoneroad's employees or agents to enter at all reasonable times into the premises where the Services will be provided to inspect, test, install, maintain, replace and remove the Services or Equipment prior to, during and after the provision of the Services, as well as to inspect any other equipment used in or in connection with the Services. The Customer will provide safe access to the premises and safe conditions for Stoneroad's employees or agents whilst in the premises.

5.2 Provision of Services is subject to Stoneroad gaining access to the building and the Customer's premises to install the equipment. The Customer will provide necessary assistance to facilitate such access including: where internal wiring work is required, to remove and reinstate any interior furnishings that may be affected; provide necessary tools such as construction platform and seeking permission to drill holes. Stoneroad may cancel the Application without any liability to the Customer if access is denied or necessary arrangement(s) are not made or it is not technically or commercially feasible to install the required facilities to provide the Services.

## **6 Equipment**

6.1 Stoneroad will endeavour to deliver and install such Equipment as agreed with the Customer to the agreed installation site on the date determined by Stoneroad or agreed with the Customer. The title to the Equipment delivered and/or installed shall remain with Stoneroad and the risk of loss or damage shall be borne by the Customer.

6.2 The Customer must:

- (a) provide a suitable place for the Equipment to be installed;
- (b) provide proper and adequate lighting, fire protection, approved power supply, approved wiring and any other special requirements as informed by Stoneroad;
- (c) obtain any consents required for the installation and connection of the Equipment;
- (d) provide safe conditions for the installation of the Equipment;
- (e) not misuse the Equipment and will follow any directions from Stoneroad and the manufacturer regarding the use of the Equipment;
- (f) leave the Equipment where it was installed and never interfere with the Equipment or any identifying marks or numbers on it unless authorised in writing by Stoneroad;
- (g) protect the Equipment from radio or electrical interference, abnormal environmental conditions and any other risks; and
- (h) not use or allow others to use the Equipment for any purpose other than that for which the Equipment was provided.

6.3 For the sale and rental of Equipment, the following conditions shall apply:

- (a) Equipment is for the sole use of the Customer and in connection with the Service. The Equipment is not for resale or for use with other services or products.
- (b) Equipment sold (excluding consumables) will be warranted to be free from defect in workmanship and material under normal use and service for a period of 12 months from the date of purchase ("Warranty"). During the warranty period, Stoneroad will at its own option and cost replace and repair the Equipment or any parts of the Equipment except replacements and repairs caused by any of the events set out in paragraph (d).
- (c) During the rental period of Equipment, Stoneroad will at its own option and cost replace and repair the Equipment or any parts of the Equipment except replacements and repairs caused by any of the events set out in paragraph (d).

- (d) Stoneroad does not have any obligations to replace or repair any Equipment caused by: accident, negligence or improper use; modification, repair or alteration not authorised by Stoneroad; removal or relocation of Equipment without the approval of Stoneroad; or non-compliance of the environmental conditions for the installation of the Equipment.
- (e) Stoneroad has the right to terminate the rental or applicable Warranty if: (i) any alteration, modification or repair is made to the Equipment without the authorisation of Stoneroad; (ii) the Equipment has been used in connection with any parts not approved by Stoneroad; (iii) the serial number on the Equipment has been removed, defaced or altered; or (iv) the Equipment is re-sold or transferred by the Customer without the written approval of Stoneroad.
- (f) Stoneroad shall be entitled to charge the Customer repair or replacement cost and other testing or handling charges in respect of the Equipment or any part of the Equipment not covered by the Warranty.
- (g) Risk of loss or damage to the Equipment shall pass to the Customer on installation. For sale of Equipment, title in the said Equipment shall not pass until full payment of the purchase price is received by Stoneroad. Title shall not pass for Equipment on rental.
- (h) The Customer shall provide suitable environment as instructed by Stoneroad for installation of the Equipment.
- (i) On termination or expiration of the rental period the Customer shall permit Stoneroad to access the premises where the Equipment is installed to remove the Equipment.
- (j) On expiration of the rental period, the Equipment on rental shall continue on a monthly basis until otherwise terminated by either party by giving to the other no less than 30 days' written notice or otherwise extended.

## **7 Charges for Services and Payments**

7.1 All charges for Services will be as specified in the Application.

7.2 The Customer shall pay Stoneroad the full amount of the charges for Services as specified in the invoice from Stoneroad without deduction or set-off. Charges for Services are exclusive of any applicable taxes, withholdings of any kind, surcharges, duties or other similar charges assessed or imposed by any competent governmental authority on, or in relation to the Service ("Taxes") or any third party charges. In addition to all other charges and amounts payable under the Contract, the Customer shall be solely responsible for payment of any Taxes. The Customer shall not deduct any Taxes from the charges payable to Stoneroad.

7.3 Charges are payable from the date when the Service is ready for operation or connected except for charges which are based on usage. All periodical and rental charges are payable in advance.

7.4 Charges payable based on usage will be calculated by reference to the details of such usage as are recorded by Stoneroad.

7.5 Where services of a third party is accessed using the Service, the Customer shall pay charges relating to the services of that third party to Stoneroad on demand.

7.6 If the Customer has paid an amount of charges in advance and that the amount is less than the amount of charges payable for that period (including the effect of variation to charges during a period), the Customer shall pay to Stoneroad for the difference between the amount paid in advance and the amount of charges so payable.

7.7 Notwithstanding the foregoing Stoneroad may at any time issue an interim invoice for charges due at the date of issue requiring payment of those charges immediately or within a specified period, and on issue of such an interim invoice or demand, those charges are so due and payable by the Customer to Stoneroad.

7.8 Payment by cheque will be deemed to be unpaid until the cheque has been cleared and the Customer will be liable to Stoneroad for any bank fees incurred for dishonoured cheque.

7.9 The Customer will continue to be responsible for all charges for the Service between the time of suspension and the actual cancellation or termination of the Service.

7.10 If there is any dispute relating to the charges for Services, the records of Stoneroad will be conclusive evidence of the charges payable by the Customer. Any disputes must be raised with Stoneroad within 15 days of receipt of the invoice.

7.11 The Customer shall pay for all charges for Services on or before the payment due date set out in the relevant invoice of account from Stoneroad.

## **8 Security for Payment of Charges**

8.1 At any time Stoneroad may require the Customer:

- (a) to provide a security deposit for charges incurred or will be incurred for the Service; or
- (b) to pay in advance the whole or part of the charges which will be or may be estimated to be incurred for the Service.

8.2 The receipt by Stoneroad of such a security or advance payment will not relieve the Customer from compliance with the Contract as to payment of periodical charges in advance, nor constitute a waiver or modification of the terms and conditions of the Contract for the suspension or termination of a Service for non-payment of any charges.

8.3 If the Customer has provided security or paid charges in advance, the Customer is entitled on cancellation or termination of the Service to the release or refund of any security or any advance not required to cover charges outstanding at the time of cancellation or termination provided the Customer submits its request in writing to Stoneroad within six (6) months of the cancellation or termination of Service.

8.4 Security or advance payment made by the Customer is not risk free. In the unlikely event that Stoneroad goes into liquidation, there is no guarantee that Customer will receive refund of any security or advance payment, the rights for the Customer to get refund will be subject to the relevant laws and regulations governing liquidation of companies in Hong Kong.

## **9 Cancellation, Change or Deferment of Application**

The Customer may cancel, change or defer the Application by written notice to Stoneroad. The Customer shall pay to Stoneroad a cancellation fee (if any) specified in the Application and such amount for the work done, any expenses incurred and loss or damage sustained by Stoneroad as a result of the cancellation, change or deferment.

## **10 Suspension or Restriction of Service**

Stoneroad may suspend or restrict a Service at any time without notice for any period as it sees fit without being liable to the Customer or any third party for any loss or damage whatsoever resulting from or in connection with the suspension or restriction of the Service:

- (a) in an emergency or when Stoneroad considers it necessary in order to safeguard provision of;
- (b) while payment of charges for the Services is overdue;
- (c) if Stoneroad is unable to locate the Customer at the address notified by the Customer and has reason to believe that the Customer is no longer residing at that address;
- (d) if in the reasonable opinion of Stoneroad there is, has been or may be unauthorised or fraudulent use of the Service;
- (e) if the Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or composition with the Customer's creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed;
- (f) if the Customer is in breach of the Contract;

- (g) if in the reasonable opinion of Stoneroad the use of the Service or Equipment by the Customer is causing or may potentially cause damage or any interference to the Service or Equipment or inconvenience to other Customers of Stoneroad;
- (h) to carry out routine maintenance to the Service; or
- (i) if Stoneroad is obliged to comply with a direction or request of other competent government authority.

## **11 Termination of Service**

11.1 Stoneroad may terminate the provision of a Service to the Customer without necessarily informing the Customer:

- (a) following the suspension of the Service to the Customer;
- (b) if the Customer vacates the premises in which an Equipment is located and does not request cancellation of the Services at that time;
- (c) if the Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or composition with the Customer's creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed;
- (d) if the Customer being a natural person dies;
- (e) if, whether or not the Service has already been suspended under clause 10, payment of an account, or provision of security for the Service is overdue;
- (f) if Stoneroad is refused entry or for any other reason is unable to enter any premises to install, inspect, repair or change the Equipment or other equipment used in connection with the Services;
- (g) if Stoneroad has given written notice to the Customer that there is a fault in the operation of the Service which is caused by a defect in facility which is provided by the Customer and which Stoneroad has not contracted to maintain and the defect is not corrected by the Customer after expiration of the time specified in Stoneroad's notice; or
- (h) if the Customer is in breach of the Contract.

11.2 The minimum subscription period ("MSP") for a Service is 12 months unless otherwise as stated on the Application. If the Customer does not intend to renew the Contract upon the expiry of the MSP, the Customer must give Stoneroad not less than 30 days' written notice. The Service will continue on a month to month basis after the expiration of the MSP. Except for termination under clause 11.1, either party may terminate a Service by giving to the other party not less than 30 days' written notice. If the Service is terminated before expiration of the MSP by the Customer or by Stoneroad under clause 11.1, the Customer shall on demand pay to Stoneroad an early termination charge as set out in the Application. If early termination charge is not set out in the Application, the early termination charge will be an amount equivalent to charges payable for the Service for the remaining term of the MSP. MSP shall exclude any period during which free rental has been provided. For termination of Service the Customer shall complete the service disconnection form from Stoneroad and give not less than 30 days' written notice.

11.3 Where provision of a Service has been terminated under clause 11.1 or 11.2:

- (a) the reconnection of the Service will be subject to the appropriate connection charge specified in the Application;
- (b) for the rental of Equipment, Stoneroad will arrange to collect the Equipment installed at the Customer's premises. The Customer will be liable to pay Stoneroad equipment charge if the Equipment is not returned in good condition.

## **12 Exclusions and Limitation of Liability**

12.1 To the extent allowed by law, the liability of Stoneroad whether arising from a breach of contract or negligence on the part of Stoneroad or the employees or agents or contractors or suppliers (including suppliers of

the Services or parts of the Services) will be limited to the supply or resupply of the Services, as the case may be or the applicable service level rebates or credits.

In any event, the maximum liability of Stoneroad shall not exceed the total amount received by Stoneroad for the Services during the 3 months period prior to when such claim arose.

12.2 Under no circumstances will Stoneroad, its employees, agents or contractors or suppliers (including suppliers of the Services or parts of the Services) be liable in any way whatsoever to the Customer or any other person for any special, indirect or consequential loss or damage, loss of profit, business, revenue, goodwill, use of data or anticipated savings.

12.3 If Stoneroad fails to meet any service level agreed with the Customer applicable to the Services, Stoneroad's liability shall be limited to the applicable service level rebates or credits agreed with the Customer.

12.4 Stoneroad will not be liable to the Customer or any person claiming through the Customer for any defaults caused by an event beyond the reasonable control of Stoneroad including any repair required for any fault in the Service due to natural disaster; misuse or unauthorised use of Services by the Customer or any third party; the Customer's provided equipment; or abnormal environment conditions.

### **13 General Provisions**

13.1 The Contract represents the entire understanding between Stoneroad and the Customer relating to the Services and there are no promises, terms, conditions or obligations, oral or written, expressed or implied, other than those contained in the Contract.

13.2 Each of the provisions of the Conditions is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions will not be affected in any way.

13.3 The Contract and any transactions contemplated by the Contract are governed by the law in force in Hong Kong and each party submits to the exclusive jurisdiction of the courts of Hong Kong for determining any disputes concerning the Contract and any transactions contemplated by the Contract.

13.4 The Conditions may be translated into Chinese. If there is any inconsistency or conflict between the English version and the Chinese version, the English version shall prevail, to the extent of such inconsistency or conflict.

13.5 A copy of the Conditions may be inspected at the principal business premises of Stoneroad or provided to the Customer on request at a fee.

13.6 Any invoices, notices or communication by Stoneroad to the Customer shall be sufficiently given to the Customer if addressed to the Customer at the address notified to Stoneroad by the Customer, by post or facsimile transmission or email and shall be deemed to have been given and received on the day on which such communication ought to have been received in the ordinary course of such transmission or delivery.

13.7 The Customer shall not assign or transfer any or all of its rights and obligations under the Contract to any third party. Stoneroad may at any time assign or transfer any or all of its rights and obligations under the Contract to any person without the Customer's agreement.

13.8 No delay, neglect or forbearance on the part of Stoneroad in enforcing against the Customer any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of Stoneroad under the Contract.

13.9 Cancellation or termination of a Service or the Contract does not operate as a waiver of any breach by a party of any of its provisions and is without prejudice to any rights, liabilities or obligations of any party which have accrued up to the date of termination, including without limitation an obligation to pay any accrued charges.

13.10 These Conditions may be amended from time to time by Stoneroad. Such amendments shall become effective when published, advertised or notified to the Customer by such means as Stoneroad thinks fit and shall be binding on the Customer if the Customer continues to use any of the Services after the effective date thereof. For the most up-to-date version of these Conditions, the Customer may access Stoneroad's official website [www.eciotstore.com](http://www.eciotstore.com).

END