



## TERMS AND CONDITIONS OF SERVICE

Specialized Technology Resources (H.K.) Ltd. ("STR") undertakes to provide services ("Work(s)") to its Customer subject to the terms and conditions ("Terms") contained herein.

The term of limitation of liability contained herein has been conspicuously marked to draw to the attention of the Customer. The Customer is advised by STR to take separate legal advice and is fully aware of the meaning and the legal significance of this term. The Customer agrees that this term is integral part of this Agreement.

### COMPUTATION OF CHARGES AND PAYMENT

- 1.1 (a) Consulting time shall be charged on a daily basis.  
(b) Where the personnel of STR are assigned to its Customer for any in-house projects, the Customer shall be billed on an hourly basis on the compensation rates of its personnel.
- 1.2 Disbursements incurred on the Customer's behalf such as expenditure for communications, transportation, travel, purchase of any materials, tools, equipment, components or parts which are directly related to the Work(s) shall be billed at costs and shall additionally include STR's reasonable handling charge at the discretion of STR.
- 1.3 Where in the opinion of STR the Work(s) are time consuming entailing the use of special equipment and disbursements, the Customer shall be charged on an "equipment-hour" basis on the time spent.
- 1.4 Payments shall be made in Hong Kong Dollars at STR's address or at such other address and in such manner as STR may from time to time specify. Payment made by post shall be at the risk of the Customer.
- 1.5 The Customer undertakes during the continuance of this Agreement: -
  - (a) to punctually pay all billings rendered to the Customer from time to time;
  - (b) unless otherwise agreed in writing, payment is to be made within seven (7) days from the date of Invoice or Debit Note;
  - (c) where the Customer shall fail to pay within time, STR shall charge interest on overdue invoices at the rate of 2% per month;
  - (d) STR shall have a lien on any goods of the Customer until payment but the exercise of such lien shall not prevent interest from accruing.
- 1.6 If the Customer shall fail to pay STR for any reason under Clause 1.5 or if the Customer shall commit a breach of any of its obligation under this Agreement or if a receiver of the Customer is appointed or if any resolution or petition to wind up the Customer's business shall be passed or presented (except for the purpose of reconstruction), STR may without prejudice to its other rights either suspend or terminate the Agreement and in such an event STR may also suspend or terminate any other existing contracts without being liable to damages.

### OBLIGATIONS OF THE CUSTOMER

- 2.1 If the Customer intends to make any change(s) to the Work(s) hereunder or assign any other work to STR prior to the completion of Work(s), such a change or new assignment shall only be effective in writing between both of the parties. If STR suffers from any loss or damage due to such a change or new assignment, the Customer shall compensate STR for such losses and damages.
- 2.2 If the Work(s) undertaken by STR hereunder requires any assistance from the Customer, the Customer shall be obliged to provide all necessary and reasonable assistance which STR may deem fit. If the Work(s) undertaken by STR hereunder cannot be completed due to the Customer's failure to perform its obligation to assist, STR shall have the right to demand the Customer to perform its obligation within a reasonable period of time and may appropriately extend the time limit for STR to complete its Work(s). If upon the expiration of such reasonable time period the Customer still fails to perform its obligation to assist, STR may terminate this Agreement, without prejudice to any other rights of STR hereunder or under any applicable laws and regulations.

### SAMPLES

- 3.1 Customer shall abide by all applicable regulations when shipping samples to STR. Improper shipping may result in additional charges for costs incurred by STR: (a) to identify samples to STR; and (b) damages done to STR personnel or property as a result of improper packaging, labeling or omission of identifying documents. STR shall have the right to refuse receipt of any shipment that, in its discretion, is unsafe or has been shipped improperly. Any costs associated with refusal to accept shipment under this clause are the sole responsibility of the Customer. The Customer shall indemnify and hold harmless STR for any and all damages, expenses, fines, judgments, liabilities and costs (including attorney's fee) incurred by STR and arising from the improper packaging or shipment of the samples by the Customer.

### PATENT RIGHTS

- 4.1 Any invention made in the performance of Work(s) for the Customer by STR within the field of Work(s) undertaken for the Customer shall belong to the Customer.
- 4.2 STR's use of the aforesaid inventions shall be free of any royalty fees provided that the use of such inventions are confined to the performance of Work(s) for the Customer.

### CONFIDENTIAL TREATMENT OF INFORMATION

- 5.1 Unless otherwise specifically agreed between the parties, the Work(s) rendered by STR to the Customer shall be on a non-exclusive best-efforts basis.
- 5.2 It is explicitly agreed by STR and the Customer that all technical information (whether contained in models, drawings, reproductions of drawings, written reports, letters, memoranda or notes or in any other form) shall be kept strictly confidential by STR for the purposes of this Agreement and STR shall at all times use all reasonable efforts to prevent disclosure to third parties of any part thereof unless STR shall have first obtained the written consent of the Customer specifically authorizing such disclosure **PROVIDED ALWAYS AND IT IS MUTUALLY AGREED** that the confidentiality shall extend for a period of five (5) years from the date of completion of its Work(s) and **PROVIDED FURTHER** that STR shall not be liable under this clause if through no fault of STR the information is generally known to the public; or the information is generally known to STR; or is independently developed by STR without recourse to the materials provided by the Customer; or the information is necessary for performance by STR under this Agreement; or is disclosed in accordance with a judgment or order issued by a competent court of any jurisdiction to which the Terms are subject, or with an order, notice or requirement issued by a governmental authority; or is disclosed to the certification or accreditation bodies with which the information are relevant to the scope of certification or accreditation in order to assess STR's competence and compliance with the relevant certification or accreditation criteria.
- 5.3 STR undertakes that the identity of its Customers and the nature of Work(s) rendered shall be kept confidential unless the Customer agrees in writing to their release **PROVIDED ALWAYS** that STR shall not be liable under this clause if through no fault act or failure on its part the identity of the Customer is generally known to the public.

### DATA AND DOCUMENT RETENTION

- 6.1 (a) After the Work(s) are rendered, STR may retain a copy of all documents relating to the Work(s) (the "Supporting Documents") as long as STR, in its sole discretion, deems fit.  
(b) Unless otherwise specified or required by the applicable law, the Supporting Documents over three (3) years of age will be automatically destroyed by STR without prior notice to the Customer. Should any or all Supporting Documents less than three (3) years are scheduled to be destroyed, STR shall give the Customer thirty (30) days' written notice to the Customer's last known address of its intention to destroy the Supporting Documents. Unless the Customer makes a written request to STR reaching STR before the expiration of the said thirty (30) days seeking delivery of those documents to the Customer at the Customer's expenses, those documents shall be destroyed.  
(c) The Customer shall indemnify STR for any costs or expenses in responding to or opposing any subpoena, the production of any documents in Court seeking the disclosure of the said documents or any information contained therein.

### SOLICITATION OF EMPLOYEES

- 7.1 It is mutually agreed that neither party shall solicit the employees of the other for employment or hire unless prior written consent to do so is obtained.

### E-MAIL DISCLAIMER

- 8.1 STR shall upon written request of the Customer send the final report(s) / result(s) hereunder by e-mail rather than by paper hard copy. STR considers e-mail a valuable and efficient tool, however, STR hereby gives cautions to the Customer that the report(s) / result(s) in electronic version may inadvertently be modified once it is in the Customer's word processing system. Further, the current e-mail transmission technology may allow for interception of message(s) and report(s) / result(s) by third parties. STR shall not be held responsible for these risks, which are out of its control. Should report(s) / result(s) be sent to the Customer by e-mail on its request, such a request SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE RISK THAT THE REPORT(S) / RESULT(S) MAY BE INTERCEPTED BY THIRD PARTIES. The Customer shall agree that the report(s) / result(s) shall be sent by STR unencrypted. Transmission of the report(s) / result(s) (or other material(s) requested by the Customer) via the internet or other public network shall not be considered to constitute a breach of any confidentiality or other provisions of this Agreement between STR and the Customer, and STR shall in no way be liable for any damages resulting from such a transmission. Additionally, STR shall not be liable for any damages incurred by the Customer for any changes made to the report(s) / result(s) after it has been transmitted.

### LIMITATION OF LIABILITY

- 9.1 Subject to Clause 9.2 and notwithstanding anything contained in this Agreement, in no circumstances (except where STR has willfully refused to perform any of its obligations under this Agreement or under any order placed pursuant to Clause 2.1) shall STR be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (a) for any loss of profit, business, contracts, revenues, or anticipated savings; or (b) for any special indirect or consequential damage of any nature whatsoever.
- 9.2 If and to the extent that the Control of Exemption Clauses Ordinance (Cap. 71 Laws of Hong Kong) applies to this Agreement and that STR is held liable to the Customer, notwithstanding Clause 9.1 and anything contained in this Agreement, STR's liability to the Customer, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall in respect of this Agreement be limited to the amount of the fee paid in respect of the specific Work which gives rise to such claim.

### INDEMNITY

- 10.1 In the event of actual or threatened suit against STR in relation to the Work(s) undertaken on behalf of the Customer or in relation to any of the Products or the Trade Mark or Patent of the Customer or of any allegation of infringement of any letters patent, registered design, trade mark or trade name, the Customer shall indemnify STR harmless from any liability, action, claim, demand, costs, charges and expenses arising therefrom or expenses including solicitors fees, counsel fees in defending such action **PROVIDED ALWAYS** that the Customer will at its own election either effect any settlement or compromise or at its own expenses defend any such action or proceeding and the Customer shall pay the costs of any settlement or compromise effected.

### EFFECT OF PROPOSAL

- 11.1 The accompanying proposal is valid for a period of ninety (90) days from the date of the proposal unless extended in writing by STR. Upon the acceptance of such proposal, this Terms shall form part of this Agreement with the Customer and notwithstanding any prior discussions or prior oral or written agreements to the contrary, the Terms herein shall be applicable and take precedence over any conflicting terms contained in any documents submitted by the Customer.

### MISCELLANEOUS PROVISIONS

- 12.1 Any provision of this Agreement prohibited by or regarded as unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed by this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement. Where however the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by such law to the end that this Agreement shall be valid and binding agreement enforceable in accordance with the Terms.
- 12.2 A certificate signed by any officer of STR as to the amount due from the Customer hereunder at the date of such certificate shall, in the absence of manifest error, be conclusive evidence of the amount due.
- 12.3 Nothing in this Agreement shall be considered to form a partnership between the parties. No party shall represent that it acts as agent for another or has any capacity to bind another in any contractual or other arrangements.
- 12.4 Save as herein otherwise provided any notice required to be given hereunder shall be sufficiently given if given in writing or by facsimile, email, internet or other possible means to the last known postal address or fax number or email address of the addressee and every notice shall be deemed to have been received and given at the time when in the course of transmission it should have been delivered at the address or fax number or email address to which it was sent.
- 12.5 This report or certificate does not relieve seller(s) / supplier(s) from their contractual responsibility with regards to the quality/quantity of this delivery nor does it prejudice the Customer's right to claim towards seller(s) / supplier(s) for compensation for any apparent and/or hidden defects not detected during STR's random inspection or testing or audit.

### GOVERNING LAW

- 13.1 This Agreement and the rights and obligations of the parties shall in all respects be governed, construed, interpreted and operated in accordance with the Laws and Regulations of Hong Kong.