

# Reorg User Agreement

*Effective: November 12, 2020*

This User Agreement is entered into between the subscriber (“You”) named in the Subscription Form and Reorg (Hong Kong) Limited, a company incorporated in Hong Kong with company number 2739769 with a registered address Unit 912, 9/F., Two Harbourfront, 22 Tak Fung Street, Hunghom, Kowloon, Hong Kong (“Reorg” or “We”, and each of You and Reorg a “Party”). By mutually executing a Subscription Form with Reorg that references this User Agreement, You agree to the terms of this User Agreement and the applicable Subscription Form (together, the “Agreement”). You represent that the individual signing the applicable Subscription Form has the authority to bind You and is entering into this Agreement on Your behalf.

## 1. Definitions.

**“Authorized Users”** means the individuals who are authorized and permitted to use the Services as set forth in the Subscription Form under “Authorized Users.”

**“Derived Data”** means Information that has been modified from its original form and integrated with Your other internal documents and work product as permitted pursuant to Section 5.1(d)(iii) of this Agreement.

**“Downtime”** means the loss of a material function of the Services, which loss was caused solely by a failure of Reorg’s computer or server equipment that provide the Services. “Downtime” does not include any inability to access the Services as a result of (i) the failure of a third party vendor of Reorg, (ii) scheduled maintenance lasting no more than eight hours that has been communicated to You prior to such maintenance, provided that if longer than three hours, such maintenance will occur during non-business hours (New York time), and (iii) any Force Majeure Event. Notice of scheduled maintenance can be provided by email or through the Services and does not need to be provided in accordance with Section 11.11.

**“Information”** means statements, content, articles, alerts, data, reports, summaries, opinions, analyses and other information or materials delivered or made available in connection with the Services or obtained through use of the Services.

**“Insubstantial Portion”** means limited extracts which have no independent commercial value.

**“Mass Distribution”** means (a) the use, publication or inclusion of any Information other than in accordance with Section 5.1(d)(iii) in (i) any press releases, blog postings, newsletters, articles, bulletin boards, or any other publications accessible to non-Authorized Users or (ii) any communication by You (including, without limitation, via any electronic means, website posting or email) that can be viewed by more than ten individuals that are not Authorized Users; (b) setting up, creating, configuring or automating any email (or other) alert functionality of the Services on behalf of any non-Authorized User or utilizing email auto-forwarding or any similar email filter or functionality to distribute or redistribute Information to any non-Authorized User; (c) utilizing, configuring or distributing any Information (in whole or in part) for marketing and/or promotional purposes or otherwise establishing or allowing establishment of the Services as a service bureau for any third party or non-Authorized User; (d) otherwise using or configuring the Services in any manner that (i) replicates, or seeks to replicate, in whole or in part, the Services on behalf of or for the benefit of any non-Authorized User, or (ii) undermines the ability of Reorg, as determined in its sole and absolute discretion, to market or sell any of its services, including the Services, to any third party.

**“Non-Systematic”** means infrequent and not automatically generated by machine or regularly created by an Authorized User.

**“Reorg Affiliate”** means any entity that directly or indirectly controls, is controlled by or is under common control with, Reorg.

**“Services”** means the news, media, data, reports, analyses, information, opinion and other subscription services offered by Reorg and/or a Reorg Affiliate and subscribed to by You, as indicated on the Subscription Form.

**“Site”** means any website and associated webpages, including without limitation [reorg.com](https://reorg.com), that is operated by Reorg and/or another direct or indirect subsidiary of Reorg.

**“Subscription Form”** means the document attached hereto as Exhibit A and fully incorporated herein and made a part of this Agreement, as the same may be amended or replaced from time to time in accordance with its terms and pursuant to a written agreement by the Parties hereto, and any additional subscription forms executed by the Parties that specifically reference this Agreement.

**2. Governing Terms.** By subscribing to the Services and executing a Subscription Form, You agree to abide by all the terms and conditions of this Agreement.

**3. Scope of Services; Modifications.** Only those Services indicated on the Subscription Form(s) shall be provided to You under the terms of this Agreement. Reorg may modify the Services at any time but will not materially reduce the core functionality of a Service or discontinue any Service without providing prior written notice to You.

#### **4. Privacy; Confidentiality.**

**4.1. Privacy.** You agree and acknowledge that Reorg and/or a Reorg Affiliate may store Your and/or Your Authorized Users' data, including but not limited to, IP address(es), email address(es), passwords, and other information transmitted by Your or Your Authorized Users' computer(s) or network to the extent reasonably necessary for Reorg to authenticate Your and Your Authorized Users identity and provide access to the Services, and as otherwise permitted by the Site privacy policy (as amended from time to time).

**4.2. Data Protection.** If You or Your Authorized Users are based in the United Kingdom or European Union, or if You or Your Authorized Users are based in Hong Kong, or Reorg and/or a Reorg Affiliate is able to control in or from Hong Kong, the collection, holding, processing or use of Your or Your Authorized Users' Personal Data (as defined in Exhibit B), Reorg and Reorg Affiliates will process Your Personal Data as set out in the applicable sections of Exhibit B to this Agreement, which exhibit can be found at <https://reorg.com/reorg-user-agreement-exhibitb/> and is incorporated herein by reference. To the extent that there are changes to privacy or data protection laws or regulations, or interpretations thereof, anywhere in the world, You agree that Reorg may amend the provisions on Exhibit B to comply with such changes, provided that Reorg will notify You of such changes in accordance with Section 11.1.

#### **4.3. Confidentiality.**

- a. Each Party acknowledges that it will have access to certain Confidential Information of the other Party as a result of this Agreement and Services provided hereunder. "Confidential Information" is information that is proprietary and/or non-public information of each Party, including, without limitation, the pricing and other terms and conditions of this Agreement, and information relating to each Party's business plans, methods, processes, code, data, information technology, network designs, passwords, and sign-on codes. Each Party agrees to treat and protect the other Party's Confidential Information as confidential, using no less care than that which each Party would use to protect and preserve its own confidential and proprietary information (but in no event less than a reasonable degree of care), and will not use the other Party's Confidential Information for any purpose except as permitted under this Agreement.
- b. Confidential Information does not include information that is: (i) independently developed by a Party without use of the Confidential Information; (ii) in the possession of a Party before receiving it from the other Party; (iii) required to be disclosed by law or regulation or pursuant to a regulatory or governmental request; or (iv) acquired from a third party not known to have a duty of confidentiality to the other Party. For the avoidance of doubt, nothing in this Agreement shall limit the ability of Reorg, its subsidiaries or affiliates, or any person employed by these entities, to use information obtained in its news gathering and/or news reporting services, even if such information is the same as, or similar to, Confidential Information.
- c. Each Party understands and agrees that money damages alone may not constitute a sufficient remedy for any breach of the confidentiality obligations hereunder, or Your obligations under Section 5.1 below, and that the non-breaching Party shall be entitled to seek specific performance and injunctive relief, without the necessity of posting a bond or other security except as required by any competent court, as remedies for any such breach. The Parties' confidentiality obligations under this Section 4.3 shall survive the termination, cancellation, or expiration of this Agreement.

#### **5. Obligations with Respect to Use and Provision of Services.**

##### **5.1. Your Responsibilities.**

- a. The Services are provided to You by Reorg solely for use by Your Authorized Users. You agree not to grant access to the Services to any person other than an Authorized User and to implement and employ commercially reasonable procedures to protect the confidentiality of Your and Your Authorized Users' username and password.
- b. Except as provided in Section 5.1(d) or with the express prior written consent of Reorg (which may be granted or withheld in Reorg's sole and absolute discretion), You may not, in whole or in part, modify, publish, republish, transmit, retransmit (including without limitation via any third-party content distribution platform), reproduce, participate in the transfer or sale of, create new works from, distribute, perform, display, or in any way exploit or otherwise use, any of the Information or the Services, including any images contained in the content of the Services (collectively, the "Use Restrictions"). Without limitation to any and all other remedies available to Reorg, a violation of the Use Restrictions shall constitute a material breach and be grounds for immediate termination of Your access to the Services and of this Agreement.
- c. You agree not to use the Services for any unlawful purpose. Reorg reserves the right to terminate Your access to the Services if Your use of the Services violates any laws, regulations, or rulings.
- d. Subject to Your compliance with Section 7 and to the proviso at the end of this Section 5.1(d), You shall have a limited right to:

- i. save Information obtained in connection with a Service for an Authorized User's internal business use during the term of subscription to that Service;
- ii. distribute articles or alerts that are part of the Services on a Non-Systematic basis and with attribution to Reorg to a limited number of business associates, clients, and prospective clients provided that You have a reasonable basis to believe that such selective distribution may be useful or helpful to the recipient for a particular purpose. The foregoing right to distribute is limited to targeted personal communications, such as email or letters; and
- iii. use or excerpt Insubstantial Portions of the Information on a Non-Systematic basis so long as all such content is properly attributed to Reorg and any other copyright owner identified in such content, and so long as the meaning of such content is not distorted or changed;

provided that (A) nothing in the foregoing shall affect Reorg's and/or any third party's ownership of intellectual property rights in the underlying Information, (B) in no event may You engage in a Mass Distribution, (C) any Mass Distribution by You will constitute a violation of the Use Restrictions, and (D) Your usage of the Services must comply with Section 7.4 of this Agreement.

- e. You shall be solely responsible for any opinions, recommendations, forecasts or other comments made or actions taken based (in whole or in part) on any Information. You shall be solely liable for any claims, liability or damages resulting from any infringement of copyrights, trademarks, proprietary rights, or any other claims, damages or liability arising from or in connection with Your use, distribution or dissemination of any portion of the Information or Services and agree to defend, indemnify and hold harmless Reorg with respect to any claims, damages or liability related thereto.
- f. You will provide Reorg with information regarding each Authorized User prior to such Authorized User's receipt of access to the Services, including full name, title, department, business email address, business phone number, and primary business address.
- g. You are responsible for ensuring each Authorized User's compliance with the provisions of this Agreement and You agree to be responsible for any violations of this Agreement by any of Your Authorized Users. You assume full and total responsibility for all usage or activity of Your account, including use of Your account by any third party, whether or not such use is authorized by You.
- h. You shall promptly notify Reorg of any known or suspected unauthorized use of Your account, any violation of the Use Restrictions or any known or suspected breach of security with respect to Your account. You agree to reasonably cooperate with Reorg in good faith and as reasonably necessary to remedy any unauthorized use of Your account or any security breach.
- i. In the event that You allow an unauthorized third-party access to the Information or the Services in violation of this Section 5.1, You shall be liable to Reorg for an amount equal to the fees to which Reorg would have been entitled had there been in place an agreement with Reorg, at Reorg's then-current rates, for the period during which the third party had access to the Information or the Services.
- j. You acknowledge that access to Information and the Services is subject to availability of a suitable or adequate internet connection, valid email account, computer equipment, and sufficiently available bandwidth at the time of Your attempted use or access. You shall be solely responsible for procuring the necessary computer equipment and internet connection required for accessing and using the Services. Reorg shall not be liable for any failure or inability to access the Services resulting from Your failure to procure any such necessary equipment or services.

k. The provisions of Section 5.1. shall survive the termination, cancellation, or expiration of this Agreement.

## **5.2. Our Responsibilities.**

- a. Reorg shall provide the Services during the term of this Agreement in accordance with the terms of this Agreement.
- b. Reorg shall provide the Authorized Users with periodic training opportunities regarding the use of the Services throughout the "Subscription Term" specified in the applicable Subscription Form.
- c. Reorg shall use commercially reasonable efforts to restore Services after any interruption caused by Downtime.
- d. Reorg shall not be liable for any unavailability of the Services as a result of any service interruption. Without limiting the foregoing, Reorg shall not be responsible for: (i) delivering or otherwise providing access to any Services that were published during Downtime or otherwise retroactively restoring, or reimbursing You for, any content published during such Downtime (whether or not such content is subsequently available on the Services after such Downtime) or (ii) any interruption to the Services caused by You or Your service provider(s) or other vendor(s) providing services to You. Where possible, Reorg will notify You in advance of Downtime which may render the Services unavailable. In the event that Downtime lasts longer than five consecutive business days in a calendar quarter, then You shall be entitled to extend the Subscription Term of the affected Service(s) by a number of days equal to the period of Downtime at no additional cost.

## **6. Fees; Termination; Post Termination Rights.**

### **6.1. Fees; Taxes.**

- a. You shall pay the amount set forth on the Subscription Form (the "Subscription Fee") in accordance with this Agreement. The Subscription Fee for each Service includes up to \$2,000 USD of Public Access to Court Electronic Records ("PACER") fees that may be incurred in connection with the Service during each twelve-month period (starting at the beginning of the applicable

Subscription). Term for the Service where the fees are incurred. Fees incurred from PACER usage in connection with a Service that exceed \$2,000 USD in each twelve-month period will be billed to You on a quarterly basis. Reorg will provide You with a written notice any time Your usage incurs more than \$1,000 USD in PACER fees in any twelve-month period.

b. You shall make payment within 30 days of the date of receipt of the invoice.

- If You fail to pay any undisputed sum when due, then, in addition to all other remedies available under this Agreement or at law (which Reorg does not waive by the exercise of any right under this Section 6.1), all such payments shall bear interest at a rate equal to the lesser of (i) 1.5% per month and (ii) the highest rate allowed by applicable law, beginning on the date such payment is due and until but excluding the date the overdue amount plus the applicable interest is paid; and
- If such failure continues for 10 days after written notice thereof, You shall be deemed to be in material breach of this Agreement, and Reorg may immediately suspend provision of the Services and/or may immediately terminate this Agreement.

c. If Reorg has the legal obligation to pay or collect taxes for which You are responsible, including but not limited to, sales, use, transfer, privilege, excise, and all other taxes and duties that are levied or imposed by reason of performance of Reorg under this Agreement, the appropriate amount shall be invoiced to and paid by You, unless You provide Reorg with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **6.2. Term and Termination.**

a. This Agreement shall come into force and terminate automatically, and without notice, on the dates specified on the Subscription Form unless the Services are renewed for a further term by execution of a new Subscription Form mutually agreed to by the Parties.

b. Each Party acknowledges and agrees that a material breach of any obligations under this Agreement by a Party shall upon written notice to the breaching Party result in immediate termination of this Agreement and the Services hereunder; provided, that if such breach of the Agreement is curable, the non-breaching Party shall notify the breaching Party of, and grant them ten business days to cure, such breach. In the event of any termination resulting from a breach of this Agreement by You, You shall remain liable for, and Reorg shall not be obligated to refund or credit, any fees owed for the full contract term as set forth on the Subscription Form. In the event that Reorg materially breaches this Agreement and You terminate this Agreement in accordance with this Section 6.2(b), Reorg shall provide You with a pro-rata refund of any pre-paid amounts of the Subscription Fee that You paid in respect of the remaining portion of the term of this Agreement following the date of termination. Without limiting the foregoing, You acknowledge and agree that any violation of the Use Restrictions may be a material, incurable breach as determined by Reorg in its reasonable opinion.

c. In the event that Reorg discontinues or otherwise terminates a Service (other than under Section 6.2(b) due to Your breach) prior to the termination of the applicable subscription term, Reorg will provide You with a pro-rated refund of any pre-paid amounts of the Subscription Fee that You paid in respect of the remaining portion of the subscription term for that Service following the date of termination.

**6.3. Post Termination Rights.** In the event of termination of a Service for any reason, You shall (i) expunge the Information obtained through the Service and all copies thereof from Your computer systems within thirty days of such termination and (ii) upon request, provide Reorg with written confirmation of compliance with this Section 6.3 by an officer or authorized person; provided, however, that You shall be entitled to retain one copy of such Information in accordance with Your internal record retention policy or for regulatory and compliance reasons, provided further that such retained copy is only available to back office personnel and is no longer used in Your business or for any other purpose other than to satisfy such retention requirements. Notwithstanding the foregoing, you may also retain (i) articles and alerts delivered to the Authorized Users via email through the applicable Service and (ii) Derived Data that (A) do not have any independent commercial value and (B) could not be used as a substitute for any product or service provided by Reorg or a Reorg Affiliate. The Use Restrictions shall continue to apply to any Information retained by You.

**6.4. Audit Rights.** For a period of one year following termination of a Service for any reason, upon Reorg's reasonable request and during regular business hours, Reorg may reasonably inspect and audit, or have its representatives or independent third party inspect and audit, Your books, records, and other documents as necessary to verify compliance with the terms and conditions of Section 6.3. Failure by Licensor to exercise any such audit right shall not relieve Licensee of its responsibilities to comply fully with the terms of this Agreement. All such audits shall be conducted at Reorg's sole cost and expense, unless such audit reveals noncompliance with the terms of this Agreement, in which case You shall pay Reorg (i) all fees and reasonable charges relating to the unauthorized use, retention, or redistribution of the Information discovered during such audit, and (ii) all reasonable audit expenses incurred by Reorg and its agents.

**6.5.** The provisions of this Section 6 shall survive the termination, cancellation, or expiration of this Agreement.

## **7. Proprietary Rights; Third Party Services and Content; Certain Services.**

**7.1.** All of Reorg's trademarks, service marks, and trade names, and the goodwill associated therewith ("Reorg Marks") shall remain the sole and exclusive property of Reorg and, except as explicitly provided in this Agreement with respect to attribution, You may not use Reorg Marks without the express prior written consent of Reorg.



**7.2.** All Services and Information published and distributed by Reorg and Reorg Affiliates are protected by copyright pursuant to Hong Kong and international copyright laws and treaties. All such rights are reserved. To the extent any action or usage with respect to the Services or Information is explicitly permitted or authorized pursuant to this Agreement, such authorization is not intended to and shall not vest in You any ownership interests or other rights of any kind. You agree to abide by any and all additional copyright notices or restrictions contained in any Information accessed via the Services. All Information permitted to be excerpted or distributed by this Agreement must be marked as follows:

- a. Information that You distribute pursuant to Section 5.1(d)(ii) must preserve all original copyright and other notices contained thereon; and
- b. Derived Data that you distribute to non-Authorized Users pursuant to Section 5.1(d)(iii), if not already similarly marked, must be marked with the following copyright notice: “© [Current Year] Reorg Research, Inc.”; provided that if such Derived Data has been modified by You in compliance with Section 5.1 to such a degree that it cannot easily be recognized as deriving from the Information, You may provide attribution to Reorg in lieu of a copyright notice.

**7.3.** From time to time, you or your Authorized Users may submit to Reorg comments, questions, enhancement requests, suggestions, ideas, process descriptions or other information related to the Services (“Feedback”). You agree that Reorg has all right to use and incorporate Feedback into the Services without restriction or payment to You. In connection with certain of the Services, You may submit to Reorg documents or other materials and You represent and warrant that You have the necessary power and authority to grant to Reorg the right to use such documents or other materials in connection with providing the Services.

**7.4.** The Services may include access to websites or content, data and/or other services or materials from third parties not controlled by Reorg (“Third Party Services”). For example, the Site may allow You to access information and documents from websites owned and operated by the U.S. Government, including but not limited to the U.S. Government’s court electronic records system known as PACER. Reorg does not control such Third Party Services. You agree that Reorg is not liable for any loss or damage which may be incurred by You as a result of the availability or usage of those Third Party Services or Your reliance on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such Third Party Services and You agree to defend, indemnify, and hold harmless Reorg from any and all claims or liability arising from Your use of such Third Party Services. You agree and hereby acknowledge that Reorg has an unrestricted right to use any data obtained on the Site via PACER, royalty free and without limitation. Any concerns or questions related to Third Party Services should be directed to the owner or other appropriate contact person for such third party.

Certain of the Third Party Services are governed by the terms set forth at <https://reorg.com/terms-3rdparty> and You agree to such terms, as may be updated by Reorg from time to time. Such terms are incorporated by reference and expressly made a part of this Agreement. In the event of any conflict between such third party terms and the terms herein, such third party terms shall control.

**7.5.** In connection with Your subscription to certain Service Plans that are part of the Services (including without limitation certain Reorg Covenants products, or any similar product), You may request and receive access to summaries or data (“Loan Information”) derived from loan documents (“Loan Documents”) and/or summaries or data (“Bond Information”) derived from preliminary or final offering memorandums or other bond documents (“Bond Documents”). The Loan Documents and Bond Documents (the “Debt Documents”) may be subject to confidentiality or similar restrictions, and, subject to Your compliance with this paragraph, Reorg may as part of the Services provide You with access to Loan Information and/or Bond Information (the foregoing the “Debt Information”) with respect to Debt Documents you specify. Where such confidentiality or similar restrictions exist, You represent and warrant that You are authorized to access any such Debt Information. You acknowledge that the Debt Information is subject to the same confidentiality and use obligations, if any, that apply to the Debt Documents and agree to comply with any such obligations (including not to engage in any of the actions otherwise permitted by Section 5.1(d) to the extent prohibited by such obligations). If in connection with the Services You provide Reorg with any Debt Documents, Reorg may use and make available as part of its products and services anonymized data and information derived from such Debt Documents. The Debt Information is created based on the underlying Debt Documents, and such Debt Documents and the terms of the transactions described therein are subject to change. We undertake, and You agree that We have, no duty or obligation to inform You or any other person of any such changes.

## **8. Representations and Warranties; Compliance with Law; Disclaimer.**

**8.1.** Each Party represents and warrants that;

- a. it is authorized to enter into and execute this Agreement, and that this Agreement is enforceable against such Party;
- b. neither it nor any relevant employee, agent, sub-contractor or associate used by it is the subject or target of sanctions or restrictions under applicable U.S., EU, UK or other international law or regulation relating to economic or trade sanctions, including, without limitation, the executive orders and sanctions regulations administered by the Office of Foreign Assets Control;
- c. any activities undertaken by it (or to the extent this obligation applies to You, by any Authorized User) pursuant to this Agreement and any use of or access to the Services shall comply with all laws, rules, and regulations of Hong Kong and other applicable jurisdictions, as such may be amended and in effect from time to time.

**8.2.** By using the Services You agree that neither You nor any business or entity on whose behalf You are acting (i) are in a location embargoed under U.S. Economic Sanctions, such as Iran, North Korea, Cuba, Crimea, or Syria, (ii) are listed on any restricted parties list issued by any U.S. or European governmental entity or international organization (“Restricted Parties Lists”), or (iii) will utilize this product to service, directly or indirectly, a sanctioned location or any entity appearing on any Restricted Parties Lists. You recognize the global nature of the Internet and agree to use the Services in compliance with all local rules regarding online conduct and acceptable content applicable to Your use of the Services. Specifically, You agree to use the Services in compliance with all applicable laws regarding the transmission of technical data exported from the country in which You may reside or access the Services.

**8.3.** Reorg is a news publisher. It obtains information from a wide variety of public and private sources. Reorg believes information obtained from third party sources is reliable; however, these sources cannot be guaranteed as to their accuracy or completeness nor do We accept any responsibility for errors appearing in or omissions from the Information. You acknowledge and agree that the Information is provided as general information only. Any opinions, estimates and probabilities presented in the Information constitute the judgment of the author as of the date indicated and are subject to change without notice. Other events which were not taken into account may occur, and any projections, outlooks or assumptions should not be construed to be indicative of the actual events that will occur. The delivery of the Services shall not, under any circumstances, create any implication that the Information is correct, and We do not undertake an obligation to update such Information at any time after the date noted therein. You acknowledge and agree that the information available through the Service is not to be relied upon, and You further agree to independently verify any information provided as part of the Services and which You intend to rely upon, and, if reasonably necessary, You should seek the assistance of a professional adviser in doing so.

**8.4.** The Information is not, and should not be construed as, an offer to sell or the solicitation of an offer to buy any securities. Nothing contained in the Information is intended to be, nor shall it be construed as investment advice, nor is it to be relied upon in making any investment or other decision. We do not act as a broker, dealer or investment adviser. Prior to making any investment decision, You are advised to consult with Your broker, investment adviser, or other appropriate tax or financial professional to determine the suitability of any investment. No Information provided by Reorg to You through the Services or otherwise, or communication by Reorg to You, constitutes or should be construed as legal or financial advice.

**8.5.** Other than the representations and warranties in Section 8.1, the only warranty given in relation to the services is that Reorg shall use reasonable care and skill in the provision of the Services. To the greatest extent permitted by law, Reorg specifically and expressly disclaims any and all other representations or warranties, express or implied (including without limitation with respect to the operation of the Site or its other online platforms, the accuracy or completeness of the Information, or the Services), including, without limitation, any representations or warranties of non-infringement, merchantability or fitness for a particular purpose and any warranties that may arise from course of dealing, course of performance or usage of trade. Reorg cannot warrant the accuracy of all the Information or the content of its Site or included in the Services. You agree that the use of and access to the Services is strictly on an “as-is” and “as-available” basis. You will bear all risk associated with Your use of the internet or other means of communication or data transmission.

## **9. Liability.**

**9.1.** Nothing in this Agreement shall exclude or limit either Party’s liability for death or personal injury caused by negligence; or of any common law liability to the other Party for Fraud regarding the representations and warranties made in this Agreement. “Fraud” shall mean an actual and intentional misrepresentation of a fact with the express intention that the other Party rely thereon.

**9.2.** You acknowledge that access to the Services may from time to time be unavailable, delayed, limited or slowed due to, without limitation, hardware failure, software failure, interruption of power supplies, maintenance, governmental or regulatory restrictions, exchange rulings, court or tribunal orders or other human intervention; or any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond the reasonable control of Reorg and agree that Reorg will have no liability in connection therewith other than as set forth in Section 5.2(d).

**9.3.** All warranties, conditions, terms and representations not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.

**9.4.** Notwithstanding anything to the contrary contained in this agreement, this is a comprehensive limitation of liability and, other than with respect to Your obligation to pay the subscription fees under this Agreement or pursuant to Section 5.1(i), in no event will either Party and/or its subsidiaries, affiliates, shareholders, members, directors, officers, employees, agents, representatives, licensors, successors, and assigns be liable, jointly or severally, to the other Party or any other person or entity for:

lost profits,

lost savings,

lost business, or

indirect, consequential, special, incidental, punitive, or exemplary loss or damages

(collectively, the “excluded damages”)

arising out of or in any way related to this Agreement or as a result of Your access or use of the Services whether or not characterized in negligence, tort, contract, strict liability or any other theory of liability, even if the liable Party or its subsidiaries, affiliates, shareholders, members, directors, officers, employees, agents, representatives, licensors, successors, and assigns have been advised of the possibility of or could have foreseen any of the excluded damages.

**9.5.** Without limiting the foregoing, under no circumstances will either Party's total aggregate liability to the other Party arising out of or related to the Services or this Agreement, exceed the sum of the subscription fees paid under this agreement during the most recent twelve-month period preceding the date such liability first arises. The foregoing limitation of liability does not apply to Your obligation to pay the subscription fees under this agreement or claims arising out of (x) Your breach of the Use Restrictions; or (y) either Party's willful misconduct.

**9.6.** The provisions of this Section 9 shall survive the termination, cancellation, or expiration of this Agreement.

## **10. Indemnification.**

**10.1.** Reorg Indemnity. Except as provided below, Reorg shall indemnify, defend, and hold You harmless from and against claims, demands or expenses (including reasonable legal fees) arising from any allegation by a third party that Your use of or access to the Services infringes upon the valid patent, trademark, or copyright of that third party. If a Service becomes or, in Reorg's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Reorg may, at its option (i) obtain for You the right to continue using the Service or (ii) replace or modify the infringing portions of the Service so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to Reorg, then Reorg may terminate this Agreement with respect to the infringing aspects of the Service upon written notice to You and refund to You any fees for the Service that were pre-paid for the then-current term, pro-rated for the remainder thereof in respect of such infringing aspects of the Service. The foregoing states the entire liability of Reorg, and Your exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the Services or any part thereof or its use or operation.

**10.2. Exclusions.** Reorg will have no liability or obligation hereunder with respect to any liability in respect of: (i) any use of the Services not strictly in accordance with this Agreement or in an application or environment for which it was not designed or contemplated; (ii) modifications, alterations, combinations or enhancements not created by or for Reorg; (iii) any portion of the Services that implements Your requirements; (iv) Your continuing allegedly infringing activity after being notified thereof or Your continuing use of any version after being provided modifications that would have avoided the alleged infringement; (v) material originating from a party other than Reorg or a Reorg Affiliate or originating from a government entity or a platform operated by a government entity; or (vi) any intellectual property right in which You have an interest.

**10.3. Procedures** Any claim for indemnification hereunder is contingent upon the indemnified party providing: (a) prompt written notice of the liability, provided that any delay or failure to notify the indemnifying party shall relieve such party of its indemnification obligations only to the extent, if at all, that such party has been prejudiced by reason of such delay or failure; (b) reasonable cooperation, information and assistance in connection therewith; and (c) the indemnifying party with the sole control and authority to defend, settle or compromise such liability, provided that the indemnified party may participate in such defense at its sole cost. The indemnifying party will not make any settlement that requires a materially adverse act or admission by the indemnified party without the indemnified party's written consent (such consent not to be unreasonably delayed, conditioned, or withheld). The indemnifying party will not be liable for any settlement made without its prior written consent.

**10.4.** The provisions of this Section 10 shall survive the termination, cancellation, or expiration of this Agreement.

## **11. Miscellaneous.**

**11.1. Consent to Communication.** You agree that Reorg reserves the right to send electronic or paper mail to You for the purpose of informing You of changes or additions to the Services or this Agreement. You further agree that from time to time Reorg may contact You via electronic or paper mail for the purpose of soliciting feedback or participation in user surveys relating to the Services. Any such feedback obtained from You will not be shared with any third parties except in an aggregated form with all identifying information pertaining to You and Your Authorized Users removed. You shall have no obligation to participate in or respond to any such survey.

**11.2. Force Majeure.** Except for any payment obligations, neither Party will be liable to the other for failure to fulfill obligations hereunder if such failure is due to causes beyond its control, including, without limitation, acts of God, earthquake, explosion, fire, flood, unusually severe or abnormal weather, embargo, catastrophe, sabotage, utility or transmission failures, strikes, lockouts or other labor difficulties, governmental actions, prohibitions or regulations, voluntary or involuntary compliance with any law or request of any governmental authority, national emergencies, insurrections, riots, wars or other civil disturbances, acts of terrorism, viruses or network outages, to the extent they did not result from the negligent acts or omissions of such Party, its employees or agents ("Force Majeure Event"). The time for any performance required hereunder will be extended by the delay incurred as a result of such Force Majeure Event.

**11.3. Assignment; Combination Event.** Neither Party may assign this Agreement, in whole or in part, without the other Party's prior written consent; provided, however, that (i) Reorg may assign this Agreement to a Reorg Affiliate and (ii) either Party may assign this Agreement to a successor in interest in the event of a reorganization, merger, consolidation or sale of all or substantially all of its assets or stock. Any assignment in violation of this section is null and void, ab initio. If, during the term of this Agreement, You or a parent entity of You, by operation of law or otherwise, directly or indirectly (i) acquires all or substantially all of the stock or assets of



another Reorg subscriber or its parent entity (a “Reorg Subscriber”), (ii) have all or substantially all of Your or its stock or assets acquired by another Reorg Subscriber, or (iii) merge with another Reorg Subscriber (any event described in the foregoing, a “Combination Event”), and with respect to any of the foregoing clauses such other Reorg Subscriber subscribes to one or more Reorg service that is the same as a Service subscribed to by You hereunder (such Reorg Subscriber service and Service hereunder, a “Similar Service”), the term of any Similar Service(s) will be extended so that the terms of all Similar Services expire at the same time as the Similar Service with the longest remaining term and You agree to pay an additional Subscription Fee based on the subscription fee of the extended Similar Service(s) prorated for the additional time of subscription resulting from such extension. If a Combination Event occurs and a User Agreement with one of the parties to the Combination Event is not assumed by the surviving party or buyer, the term of any Services and Subscription Fees payable under the remaining User Agreement will be adjusted so as to result in the same economic effect as the prior sentence. If You engage in a Combination Event-type transaction with a third party and such transaction results in additional usage or users of the Services, you agree to pay an additional Subscription Fee based on such additional usage or users as determined by Reorg in its reasonable discretion.

**11.4. No Third-Party Beneficiaries.** This Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective permitted successors or assigns. Except as expressly provided in Section 7.4, nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever.

**11.5. Third Party Ordinance.** A person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the laws of Hong Kong) or otherwise to enforce any of its terms.

**11.6. Variation.** No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

**11.7. Waiver; Remedies Cumulative.** The rights and remedies of the Parties are cumulative and not alternative. Neither any failure nor any delay by a Party in exercising its right, power, or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege or any future exercise thereof, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power or privilege, or the exercise (or future exercise) of any other right, power, or privilege. Any waiver of any breach of this Agreement must be in writing.

**11.8. Severability.** If any provision of this Agreement is found to be unenforceable, invalid or illegal by any court of competent jurisdiction, it shall not affect the enforceability of the remaining provisions and the court or arbitrator shall enforce the remaining provisions to the extent permitted by law.

**11.9. Headings.** Headings or titles to sections or subsections in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any part hereof.

**11.10. Governing Law; Disputes.** This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the Parties hereby agree to submit for all purposes relating to this Agreement to the exclusive jurisdiction of the Courts of Hong Kong.

**11.11. Notices.** Subject to Section 11.1, all notices required under this Agreement (other than routine operational communications) must be in writing and will be delivered either personally or by e-mail, first class prepaid recorded delivery or registered post (air mail if overseas). Notices will be effective upon: (i) actual delivery to the other Party, if delivered in person or by e-mail, or national overnight courier; or (ii) two (2) business days after being mailed (six (6) business days if sent by air mail). Such notices shall be addressed to the address provided by Party on the Subscription Form or such other address as may have been notified to the other Party in accordance with this section (provided that any email notices to Reorg will be sent to sales@reorg.com).

**11.12. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties, whether written or oral, including the Reorg Research Terms of Use located on the Site.

**11.13. Counterparts.** This Agreement may be executed in counterparts (which may be exchanged electronically), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**11.14.** The provisions of this Section 11 shall survive the termination, cancellation, or expiration of this Agreement.

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