

# 1 GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

You agree with Nexon Asia Pacific as follows:

## 1 PROVISION OF SERVICES

- a Subject to the provisions of the Service Agreement, Nexon Asia Pacific will use its reasonable commercial efforts to supply the Services.
- b Nexon Asia Pacific may publicly refer to You orally and in writing as a customer of Nexon Asia Pacific.
- c Nexon Asia Pacific shall have the right, at any time, to perform a credit reference check and/or a trade reference check with respect to Your circumstances or status, whether financial or otherwise.

## 2 ADDITIONAL SERVICE SPECIFICATIONS

- a You and Nexon Asia Pacific may, by completing and signing a Service Specification agree to the supply of additional Services subject to and in accordance with the provisions of the Service Agreement.
- b Where Nexon Asia Pacific supplies more than one Service under the Service Agreement, Nexon Asia Pacific may supply each Service separately and treat the Service Agreement as severable in respect of any one or more of those Services.
- c Any breach or failure on the part of Nexon Asia Pacific in respect of any Service does not adversely affect or prejudice Nexon Asia Pacific's rights or remedies in respect of any other Service.

## 3 VARIATION OF A SERVICE

- a Nexon Asia Pacific may vary a Service Agreement at any time. Such variation will become effective 30 Days after notice of the variation to You. Continued use of that Service by You after the effective date will constitute acceptance of the variation by You.
- b Except as provided in sub-clause 3(a), the Service Agreement may not be varied, except by agreement in writing signed by the Parties.

## 4 CHARGE AND DEPOSIT

- a You must pay all charges for the Services on their

Payment Due Date. All charges paid to Nexon Asia Pacific by You shall be non-refundable under all circumstances. Nexon Asia Pacific reserves the right to demand payment for charges other than those specified in the Service Specification in the event that additional time and resources are reasonably utilised in order to provide the Service.

- b Unless otherwise specified in a Service Specification, all charges are inclusive of wholesale sales, value added, goods and services taxes, tariffs, duties or impositions of a similar nature imposed by any government or other authority.
- c If full payment of a charge has not been made on its Payment Due Date, Nexon Asia Pacific may charge interest on all sums outstanding at the rate of 2% per month on a daily basis from the Payment Due Date to the date full payment is received by Nexon Asia Pacific and charge You any collection and handling fees incurred by Nexon Asia Pacific.
- d Nexon Asia Pacific may invoice You in advance or in arrears on a monthly or other basis. Nexon Asia Pacific reserves the right to amend a billing period and to submit interim invoices to You.
- e You will be liable for all charges whether or not a Service was used by You or by any person with or without Your authority, knowledge or consent.
- f Nexon Asia Pacific may require You to pay a deposit or provide some other form of security in relation to Your obligations under the Service Agreement including but not limited to those relating to the Equipment and the Software. Nexon Asia Pacific may apply the deposit to reduce or pay any sums due to Nexon Asia Pacific on any account at any time. You must pay an amount equal to any shortfall of the deposit into Your account as may be required by Nexon Asia Pacific. No interest shall accrue on the deposit.
- g If You do not query any charge stated in an invoice within 10 Days of the date of the invoice then You will be deemed to have accepted the invoice.
- h In case of disputes over any Service usage or any part of any charge:

- i Nexon Asia Pacific's decision based on its Service usage records and those of any third party who may assist Nexon Asia Pacific to provide any Service shall be final and binding on You; and
- ii You must not withhold payment of any part of any charge which is in dispute.

## 5 EFFECTIVE DATE, SERVICE REQUEST DATE, COMMENCEMENT DATE AND DURATION

- a The Service Agreement shall become effective on the Effective Date and shall be in force until the Service Agreement is terminated or expires pursuant to the provisions hereof.
- b You acknowledge that:
  - i the Service Request Date is only an estimate and Nexon Asia Pacific shall not be bound by the same; and
  - ii Nexon Asia Pacific will not be liable for any delays or for any losses, costs, damages or other expenses incurred by You directly or indirectly due to any failure to meet the Service Request Date.
- c If Nexon Asia Pacific is unable to adhere to a Service Request Date as a direct or indirect result of an act or omission or breach of the Service Agreement by You, Nexon Asia Pacific may:
  - i make an additional charge for time, overtime, travel, materials, extra computer time or resource rationalisation; and
  - ii if such act or omission or breach causes delay exceeding thirty (30) Days beyond the Service Request Date, terminate the Service Agreement, and pursue other remedies available under the Service Agreement or at law and/or equity including but not limited to retaining all charges already paid by You to Nexon Asia Pacific.
- d Nexon Asia Pacific shall notify You of the Commencement Date.
- e You commit to subscribe to the Service for the Minimum Term. Thereafter, and subject to any contrary provision in this Service Agreement, the Service Agreement shall continue until either party provides the other with thirty (30) Days prior written notice of termination.
- f If the Service Agreement is terminated for any reason before the expiry of the Minimum Term, all unpaid charges corresponding to the remainder of the Minimum Term will immediately become due and payable to Nexon Asia Pacific by You as a pre-termination penalty.
- g The Service Agreement shall automatically expire upon the expiration or termination (for whatever reason) of:
  - i the Service, if only one Service is supplied by Nexon Asia Pacific under the Service Agreement; or
  - ii the last remaining Service, if more than one Service

is supplied by Nexon Asia Pacific under the Service Agreement.

## 6 LEASED EQUIPMENT

- a The Leased Equipment shall at all times remain the property of Nexon Asia Pacific or (as the case may be) the Third-Party Service Provider.
- b You shall:
  - i keep the Leased Equipment in good and clean condition at all times;
  - ii keep the Leased Equipment at all times at the Site(s) within Your possession and control;
  - iii ensure that the Leased Equipment is housed, used and operated in a suitable environment and in a skilful and proper manner, and in accordance with relevant user guides and all reasonable instructions by Nexon Asia Pacific with respect to the same;
  - iv notify Nexon Asia Pacific of any change in Your circumstances which might otherwise impede Nexon Asia Pacific in tracing Your location or that of the Leased Equipment;
  - v insure the Leased Equipment on terms satisfactory to Nexon Asia Pacific;
  - vi upon demand by Nexon Asia Pacific in writing, promptly return the Leased Equipment to Nexon Asia Pacific; and
  - vii comply with the terms and conditions of the relevant manufacturers for the Leased Equipment.
- c You may not at any time:
  - i do or suffer to be done anything with regard to the Leased Equipment which might in any way prejudice any rights or interest of Nexon Asia Pacific or (as the case may be) the Third Party Service Provider; or
  - ii alter or remove any label or other markings which are on the Leased Equipment when delivered; or
  - iii tamper with the Leased Equipment, or any integrated circuit, component or protection facility contained therein; or
  - iv permit any person (other than Nexon Asia Pacific and any person authorised by Nexon Asia Pacific in writing) to carry out any repairs or maintenance to, or any removal or replacement of, the Leased Equipment.
- d Notwithstanding other terms of the Service Agreement, if the Leased Equipment proves to be defective under normal use due to defective materials, design and/or workmanship, Nexon Asia Pacific may at its sole option either repair the Leased Equipment or replace the Leased Equipment with an Equipment of the same or comparable type.
- e Upon the date of termination or expiration of the Service Agreement (howsoever caused), You shall promptly (and in any event within five (5) Days from such date of termination

or expiration) return at Your own cost the Leased Equipment to Nexon Asia Pacific.

- f** If You fail to comply with any of the obligations in sub-clause (e) or there is any loss or damage to the Leased Equipment, You must pay, upon demand by Nexon Asia Pacific, an amount equal to the full retail price of the Leased Equipment or any compatible replacement as shall be solely determined and specified by Nexon Asia Pacific and all other amounts (of whatever nature) Nexon Asia Pacific may be held liable for by third parties due to such non-compliance, loss or damage. Nothing shall preclude Nexon Asia Pacific from exercising any other remedies available to it under the Service Agreement, in law and/or equity.
- g** When the Service Agreement terminates or expires or You damage the Leased Equipment, You authorise Nexon Asia Pacific to enter the Site(s) and take whatever steps are appropriate to disable or modify the Leased Equipment or to remove it.

## 7 SALE OF EQUIPMENT

- a** Title in any Equipment sold to You remains with Nexon Asia Pacific or the third party owner until Nexon Asia Pacific has received payment in full on or before the Payment Due Date. If full payment is not received by the Payment Due Date, You must, upon written demand of Nexon Asia Pacific, immediately re-deliver the Equipment to Nexon Asia Pacific.
- b** You may not part with, sell, charge, modify, or otherwise deal with the Equipment unless title has lawfully passed to You.
- c** Risk in the Equipment will pass to You on delivery, including but not limited to loss, theft, damage or destruction.

## 8 SOFTWARE

- a** Nexon Asia Pacific grants to You a non-exclusive and non-transferable license to store, run and use the Software subject to the provisions of the Service Agreement.
- b** You shall, upon demand by Nexon Asia Pacific in writing, immediately return the Software to Nexon Asia Pacific;
- c** You shall not, and shall procure that all persons under Your control shall not, copy, sell, lease, alter, modify, adapt, translate, decompile, disassemble or reverse engineer the Software or attempt to do any such thing.
- d** The provisions of clauses 6(e), (f) and (g) shall apply to the Software.

## 9 YOUR RESPONSIBILITIES

- a** You agree to:
  - i** ensure that any information which You give Nexon Asia Pacific relating to Your use of the Services is complete and accurate.
  - ii** advise Nexon Asia Pacific promptly if there is a change in the Data already furnished to Nexon Asia

Pacific including but not limited to Your premises or postal address.

- iii** follow Nexon Asia Pacific's reasonable directions about the use of the Services and any modifications which You need to make to Your equipment so that You can use the Services.
- iv** not use any part of the Service for any obscene, offensive, improper, immoral, defamatory, indecent, abusive, menacing or unlawful purpose or for any unsolicited advertising messages or promotions nor allow others to do so.
- v** use the Services for lawful purposes only and comply with all applicable laws relating to Your use of the Service.
- vi** not use the Services or any Equipment in a way which interferes with or disrupts Nexon Asia Pacific's Network.
- vii** ensure that anyone else who uses the Services does so in a manner which is consistent with Your obligations under the Service Agreement.
- viii** comply with all of Nexon Asia Pacific's instructions and rules and regulations relating to the Service, as may be changed by Nexon Asia Pacific from time to time.

## 10 THIRD PARTY AGREEMENT

- a** You shall enter into Third Party Agreements as are specified in the Service Specification.

## 11 DATA PROTECTION

- a** You acknowledge and agree that the Data may be processed by:
  - i** Nexon Asia Pacific and its affiliated or related companies in accordance with the policies and practices of Nexon Asia Pacific (as may be amended by Nexon Asia Pacific from time to time); and
  - ii** subcontractors and agents (including but not limited to Third-Party Service Providers) of Nexon Asia Pacific in connection with processing orders and the delivery, installation, support and maintenance of a Service.
- b** You acknowledge that processing of the Data may involve transfer of the Data out of the Country.
- c** You may at any time notify Nexon Asia Pacific in writing that You do not wish Nexon Asia Pacific to process the Data, provided that such processing is not reasonably necessary for the performance of Nexon Asia Pacific's obligations under the Service Agreement.
- d** You may ask to see the Data and request Nexon Asia Pacific to correct any such information that is incorrect.

## 12 CONFIDENTIALITY

- a** A Party must not, without the prior written approval of

the other Party, disclose the other Party's Confidential Information.

- b** A Party will not be in breach of sub-clause a where it is legally compelled to disclose any of the other Party's Confidential Information in which event the disclosing Party will immediately notify the other Party in writing of that fact and of all relevant surrounding circumstances.
- c** Each Party will take all reasonable steps to ensure that its employees and agents, and any sub-contractor engaged for the purposes of the Service Agreement, do not make public or disclose the other Party's Confidential Information.
- d** Notwithstanding any other provision herein, Nexon Asia Pacific may disclose the terms of the Service Agreement to its affiliated or related companies, solicitors, auditors, insurers and accountants.

### 13 INTELLECTUAL PROPERTY RIGHTS AND EDITORIAL CONTROL

- a** You acknowledge that all Intellectual Property Rights and other rights in any Service (whether developed individually, collectively or jointly with You) including but not limited to the Equipment and the Software are either owned by or licensed to Nexon Asia Pacific.
- b** You must not:
  - i** use any Nexon Asia Pacific or its affiliated or related companies' Trade Marks without prior written consent of Nexon Asia Pacific; or
  - ii** take any action that may interfere with or diminish Nexon Asia Pacific or its affiliated companies' rights, title and/or interest in any of the Trade Marks.

### 14 SUSPENSION OF SERVICES

- a** Nexon Asia Pacific may suspend, disconnect or discontinue any Service in whole or in part at any time without notice and without compensation if in Nexon Asia Pacific's reasonable opinion:
  - i** it is necessary to safeguard the provision of a Service or the integrity of any Network;
  - ii** any Network or Equipment fails or requires modification or maintenance;
  - iii** there is or has been unauthorised, unlawful or fraudulent use of any Service or Your use of any Service or Equipment is causing or may potentially cause damage or interference to any Software, Network or Equipment or the contravention of any statutory requirement;
  - iv** it is necessary to comply with a direction, order or request of any government authority or other competent authority; or
  - v** You do not comply with any of the terms of the Service Agreement or a Third Party Agreement.
- b** Nexon Asia Pacific may charge for reconnection or

resumption of a Service and require revised terms and conditions following such suspension, disconnection or discontinuance.

### 15 TERMINATION

- a** Nexon Asia Pacific may terminate the Service Agreement or the supply of any Service (in whole or part) by giving written notice to You with immediate effect if:
  - i** You fail to pay Nexon Asia Pacific a charge by its Payment Due Date; or
  - ii** You are in breach of any provision of the Service Agreement or a Third Party Agreement and fail to rectify the default within ten (10) Days prior written notice; or
  - iii** You fail to comply with any reasonable requirements of Nexon Asia Pacific in relation to the use of a Service or any Networks within ten (10) Days prior written notice; or
  - iv** You become insolvent or bankrupt or Nexon Asia Pacific has reasonable cause to believe that You are unable to pay Your debts as they fall due; or
  - v** You, without Nexon Asia Pacific's express written authorisation use, modify, alter or tamper with the Network; or
  - vi** any of the information provided by You under or pursuant to the Service Agreement is found to be false or misleading or Nexon Asia Pacific has reasonable ground to believe that such information is false, misleading or inaccurate; or
  - vii** Nexon Asia Pacific ceases to make the Networks (if applicable) or a Service or any part thereof available for any reason.
- b** Upon the termination or expiration of the Service Agreement or supply of any Service (or any part thereof), all licenses, rights and privileges granted to You under the Service Agreement will cease and Nexon Asia Pacific may (without prejudice to any of its rights or remedies) also:
  - i** repossess any Equipment and/or Software that is not owned by You;
  - ii** retain any moneys paid to Nexon Asia Pacific;
  - iii** charge a reasonable sum for work performed in respect of which work no sum has been previously charged or paid;
  - iv** be regarded as discharged from any further obligations under the Service Agreement or in respect of any Services; and
  - v** pursue any additional or alternative remedies provided by law and/or equity.

### 16 LIMITATION OF LIABILITY

- a** Nexon Asia Pacific disclaims all conditions and

warranties (statutory, express or implied), including, without limitation, the implied warranties as to:

- i the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of a Service (or any part thereof);
  - ii the results or data that may be obtained from the use of a Service; or
  - iii that a Service will be uninterrupted, error free, virus free, reliable or secure.
- b** In no event will Nexon Asia Pacific be liable for any loss incurred by or any damage howsoever caused to You or any person arising out of or in connection with the Service Agreement or a Service provided or omitted to be provided under the Service Agreement, whether in Service Agreement, tort, under statute or otherwise and, whether direct or indirect, consequential or contingent, and whether foreseeable or not, including without limitation any financial loss or loss of business, profit, savings, revenue, data, goodwill or use of any equipment.
- c** Any claim by You against Nexon Asia Pacific arising out of the Service Agreement must be notified in writing to Nexon Asia Pacific within twelve (12) months of the incident giving rise to such claim or You will be deemed to have waived Your rights in respect of such claim.
- d** Nothing under this clause will limit or exclude Nexon Asia Pacific's liability which is not permitted to be limited or excluded under the law of the Country.
- e** The total liability of Nexon Asia Pacific in respect of a Service will not exceed the total charges paid by You to Nexon Asia Pacific for a Service for the immediately preceding three (3) months prior to any incident (or in case of a series of incidents arising from a common cause immediately preceding the first of such incidents) giving rise to a claim.
- f** Nexon Asia Pacific's shareholders, employees, agents, Third Party Service Providers and sub-contractors shall have the benefit of the rights, exclusions and limitations of the provisions in this Clause as if such provisions were expressly for their benefit.

## 17 MISCELLANEOUS

- a** The Service Agreement supersedes all understandings or prior agreements, whether oral or written, and all representations or other communications You may have had with Nexon Asia Pacific for the provision of the Services.
- b** You must not transfer or assign any of Your liabilities or rights under this Service Agreement to any other person without the prior written consent of Nexon Asia Pacific. Nexon Asia Pacific may appoint agents, assign, transfer, license or sub-contract the whole or any part of its rights and/or obligations contained in the Service Agreement to any person at any time.
- c** Nexon Asia Pacific will not be liable to You in the

event that Nexon Asia Pacific is unable to perform an obligation or provide a Service (or any part thereof) to You because of any Force Majeure, interruption or termination of a Service or Nexon Asia Pacific's refusal to provide a Service pursuant to the provisions of the Service Agreement.

- d** You agree to indemnify Nexon Asia Pacific fully and effectively against any action, liability, cost, claim, loss, damage, proceeding, expense (including without limitation, legal costs) suffered or incurred by Nexon Asia Pacific arising from or which is directly or indirectly related to:
  - i the enforcement of the Service Agreement against You;
  - ii Your use of a Service and any other person's use of a Service, including but not limited to claims for defamation, infringement of Intellectual Property Rights or other proprietary rights; and
  - iii any breach or non-observance of any term of the Service Agreement and/or Third Party Agreement by You or any other person.
- e** Any notification or invoice mailed by Nexon Asia Pacific under this Service Agreement, addressed to You at Your business premises or last known mailing address, will be treated as having been received by You:
  - i within forty-eight (48) hours of posting; or
  - ii on the day of personal delivery to Your address; or
  - iii immediately upon faxing if the transmission report indicates that the fax transmission was successful; or
  - iv immediately upon sending the e-mail.
- f** No delay, neglect or forbearance by either Party in enforcing against the other any provision of this Service Agreement will be a waiver, or in any way prejudice any right, of that Party.
- g** If any provision of the Service Agreement is unenforceable, the rest of the Service Agreement will remain fully enforceable.
- h** The documents comprising the Service Agreement shall be read in the following order of precedence:
  - i a Service Specification;
  - ii any Special Terms and Conditions;
  - iii the clauses of this document; and
  - iv the provisions of a document expressly incorporated by reference.
- i** Where any conflict occurs between the provisions contained in two or more of the documents forming the Service Agreement, the document lower in the order of precedence shall where possible be read to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed

from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document. Where any conflict occurs between two documents at the same level of precedence, the later dated document shall prevail.

- j** The provisions of the Service Agreement which are capable of having effect after the expiration or termination of the Service Agreement or of the Service (or any part thereof) shall remain in full force and effect following the expiration or termination of the same.
- k** The Service Agreement is governed by the laws of the Country. Each Party submits to the non-exclusive jurisdiction of the courts of the Country.

## 18 DEFINITIONS

In these terms and conditions unless the contrary intention appears:

**Account Number** means the number so described in the Service Agreement.

**Nexon Asia Pacific** means Nexon Asia Pacific Australia Pty Ltd.

**Commencement Date** means the date on which Nexon Asia Pacific notifies You that the Service is available for use.

**Confidential Information** means the confidential information of a Party including but not limited to the terms of a Service Specification, technical information of Nexon Asia Pacific and access methods authorised by Nexon Asia Pacific from time to time (for example, personal identification numbers and passwords) but excludes any information which is public knowledge (otherwise than as a result of a breach of confidentiality by the other Party).

**Country** means Australia.

**Data** means any information about You, Your shareholders, employees and customers provided to Nexon Asia Pacific in connection with a Service.

**Day** includes public holidays and Sundays.

**Effective Date** means the date the Service Agreement is executed by Nexon Asia Pacific and on which it becomes effective, as specified in the cover page of this Service Agreement.

**Equipment** means the equipment (including any related Software) and component parts supplied by or on behalf of Nexon Asia Pacific or installed or placed at Your premises for the purpose of providing a Service, as described in a Service Specification.

**Force Majeure** means a circumstance beyond the reasonable control of Nexon Asia Pacific resulting in Nexon Asia Pacific being delayed or unable to observe or perform an obligation under the Service Agreement.

**General Terms and Conditions** means this document described as such.

**Intellectual Property Rights** means patents, Trade Marks, registered designs, applications of any of the above, copyright, semiconductor or circuit layout rights, and other similar protected rights in any country.

**Leased Equipment** means the Equipment identified and specified as such in the Service Specification.

**Minimum Term** means the minimum term specified in a Service Specification to be computed starting from the Commencement Date.

**Network** means any telecommunications and/or computer network or system owned or operated by Nexon Asia Pacific, its agents or Third-Party Service Providers through which Nexon Asia Pacific makes a Service available.

**Party** means either Nexon Asia Pacific or You as the context requires.

**Payment Due Date** means the date or dates for payment of a charge for a Service as specified in (a) a Service Specification; or (b) if no payment due date or dates are specified, thirty (30) Days after Nexon Asia Pacific issues an invoice for payment of the charge.

**Service** means the services supplied to You as set out in a Service Specification; Services refers to each and every Service to be supplied under the Service Agreement.

**Service Agreement** means the service agreement for the supply of a Service, between You and Nexon Asia Pacific which is comprised of the cover sheet, these General Terms.

**Service Request Date** means the date requested by You for the commencement of the Service, as specified in the Service Specification.

**Service Specification** means a written Service Specification of any Service, in a form prescribed by Nexon Asia Pacific signed by or on behalf of the Parties and identified by the Account Number.

**Service Specification Signing Date** means the date the Service Specification is executed by Nexon Asia Pacific, as specified in a Service Specification.

**Software** means software that is to be licensed to You in connection with the Service, as described in the Service Specification.

**Special Terms and Conditions** means a document described as such.

**Third Party Agreement** means an agreement which You must enter into with a third party before Nexon Asia Pacific can provide the Service as specified in the Service Specification.

**Third-Party Service Provider** means any third party service provider or contractor on whom Nexon Asia Pacific depends in the provision of any Service or any part thereof or whose service, license, approval or fulfilment of certain obligations to Nexon Asia Pacific will affect Nexon Asia Pacific's provision of a Service or any part thereof.

**Trade Marks** means any trade marks, service marks, trade names, domain names, logos and foreign language equivalents whether registered or not.

**You, Your, Yours or Customer** means the customer named or described in the Service Agreement.