

GemCloud Software Limited

RM 1501, Prosperity Tower, 39 Queen's Road

Central, Hong Kong

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SOFTWARE AS A SERVICE AGREEMENT

This SOFTWARE AS A SERVICE AGREEMENT (hereinafter referred to as the "Agreement") is entered into between

YOU hereinafter referred to as the ("You", or the "Client") And

GemCloud Software Limited BR 2818874 Room 1501, Prosperity Tower, 39 Queen's Road Central, Hong Kong, who's preferred contact email address is billing@thegemcloud.com hereinafter "GemCloud"

jointly "Parties", on the date that you accept this agreement ("Effective Date") and governs your use of any software (together with any SDKs, libraries, utilities, tools, upgrades, updates, patches, modules, feature enhancements and additional versions of the software that replace or supplement the original software and any accompanying manuals, configuration and or operation instructions and documentation (as defined below), the "Software" provided to you by GemCloud. If you download, access, install, or use the software, you accept and agree to be bound by this Software as a Service Agreement. If you are an individual acting on behalf of an entity, you represent and warrant that you have the authority to enter into this agreement on behalf of that entity. If you do not have such authority, you are solely responsible for your use of the software. If you do not accept the terms of this agreement, then you are not permitted to install, access, download, or otherwise use the software.

By accepting the terms and conditions of this agreement, the Client shall begin a FREE TRIAL period as set forth below.

Definitions

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1. **"GemCloud"** refers to GemCloud Software Limited, a company registered in Hong Kong with the company number BR 2818874, whose principal place of business is at Room 1501 Prosperity Tower, 39 Queen's Road, Central Hong Kong.
2. **"Platform"** means the GemCloud Trader ERP, a cloud-based Enterprise Resource Planning software provided by GemCloud Software Limited.

3. **"Hosted Services"** means the services provided by GemCloud to the Client under this Agreement, which include access to and use of the Platform, as well as any associated support and maintenance services.
4. **"Authorized Users"** means the Client's officers, employees, agents, and subcontractors who are designated by the Client to use the Platform and have been granted access credentials by GemCloud.
5. **"User Interface"** means the graphical and command-line interface through which the Client and Authorized Users interact with the Platform.
6. **"Data"** means any data, information, or material provided or submitted by the Client or its Authorized Users to the Platform in the course of using the Hosted Services.
7. **"Shared Data"** means any data that the Client elects to share through the use of the Platform. This may include various forms of data related to the Client's business operations and interactions, which are marked for sharing within the Platform or specified in writing between the Parties.
8. **"Support Response Time"** means the time taken by GemCloud to acknowledge receipt of a support request from the Client.
9. **"Resolution Time"** means the time taken by GemCloud to resolve a support request or issue reported by the Client.
10. **"Scheduled Maintenance"** means any maintenance to the Platform that is planned and for which GemCloud provides advance notice to the Client.
11. **"Service Fees"** means the fees payable by the Client to GemCloud for the use of the Hosted Services, as detailed in Section 2.2 of this Agreement.

WHEREAS

1. **GemCloud Trader ERP** is a cloud-based Enterprise Resource Planning software hereinafter (the "Platform") owned by GemCloud Software Limited, a company active in providing IT solutions for the gemstone industry and its participants.
2. The Client is active in the gemstone industry owning and promoting its own inventory of gemstones; GemCloud will make available the Platform to the Client as a service via the internet in accordance with this Agreement;

NOW THEREFORE, the parties hereto agree as follows:

1. HOSTED SERVICES

1.1 License Grant: Subject to the terms and conditions of the present Agreement, GemCloud grants to the Client a world-wide, non-exclusive, non-transferable license to access and use the Platform by means of the user interface for the internal business purposes of the Client in accordance with the documentation available through the user interface and for the Term set out in this agreement. (the “Hosted Services”).

1.2 License Limitations:

- (a) The User Interface may only be used through a Supported Web Browser;
- (b) The User Interface may only be used by the Authorized Users designated by the Client among its officers, employees, agents, and subcontractors;
- (c) The Client may not transfer or sub-license the License;
- (d) For the avoidance of doubt, the Client has no right to access the software code (including object code, intermediate code, and source code) of the Platform, either during or after the Term.
- (e) The Client and its Authorized Users may not use the Platform for any unlawful or unauthorized purpose, including but not limited to exploitation of the Platform's vulnerabilities;
- (f) The Client may not provide access to the Platform to third parties for purposes of copying, replicating, or otherwise reverse engineering the Platform;
- (g) The Client may not use the Platform in any manner that could damage, disable, overburden, or impair the Platform or interfere with any other party's use and enjoyment of the Platform.

1.3 Hosted Services Limitations:

- (a) GemCloud shall use reasonable endeavors to maintain the availability of the Hosted Services with a target uptime of 99.5% per calendar month, excluding scheduled maintenance and any outages caused by circumstances beyond GemCloud's control. GemCloud will provide at least 48 hours' notice for scheduled maintenance. GemCloud shall not be responsible for any fault or failure of Client's computer systems or networks. In the event of unplanned outages, GemCloud will use all reasonable efforts to restore services as quickly as possible.
- (b) GemCloud commits to the following support response and resolution times:
 - Response Time: Initial response to support queries within 4 hours during business hours (GMT+5).
 - Resolution Time: Resolution of critical issues within one working day.

(c) The Client must not use the services in any way that causes, or may cause, damage to the Hosted Services, the Platform, use excessive resources, or otherwise impair the availability or accessibility of the Hosted Services.

(d) GemCloud may from time to time suspend the Hosted Services for the purposes of Scheduled maintenance to the Platform, upon giving reasonable notice.

(e) GemCloud may suspend the provision of the Hosted Services if any amount due to be paid by the Client to GemCloud under this Agreement is overdue, and GemCloud has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

2. END OF FREE TRIAL AND CONSIDERATION TO GEMCLOUD

2.1 Termination During Free Trial: In case the client wants to terminate the contract during the free trial, the Client shall send an email with the subject "termination notice during free trial" via email to billing@thegemcloud.com and termination will occur within 5 working days of email receipt.

2.2 Service Fees: Upon the expiration of the free trial period, the Client shall choose one of the following payment options and pay the service fee set forth herein:

- **Monthly:** USD 89 per month.
- **Yearly:** USD 912 per year (equivalent to USD 76 per month, paid annually).
- **Additional User:** USD 40 per month per additional user.

2.3 Special Pricing and Package Terms: If the Client is granted a discounted price or special package, the terms of this Agreement still apply, except where explicitly stated otherwise. The special pricing or package, including any limited access arrangements, does not invalidate any other terms of the Agreement. All terms and conditions remain in full force and effect, except where explicitly modified by the special pricing or package agreement. The Developer reserves the right to terminate or modify the special pricing or package at any time with reasonable notice.

3. DATA MANAGEMENT AND CONFIDENTIALITY

3.1 Data Handling: GemCloud acknowledges that in the performance of this Agreement it will receive, use, and maintain "Data" provided by the Client, and agrees that it shall comply with any applicable privacy or security law or regulation governing the Platform's use, disclosure, and maintenance, and with the rules fixed in this Agreement.

3.2 Ownership: GemCloud acknowledges and agrees that this Agreement does not confer rights of ownership or control over the Data provided by the Client.

3.3 Subcontractors and Agents: GemCloud may engage agents or subcontractors to perform its obligations under this Agreement. GemCloud will remain responsible for the performance of any subcontractor obligations and will ensure that subcontractors comply with relevant terms of this Agreement, particularly regarding data protection and confidentiality.

3.4 Safeguards: GemCloud shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Data, and that prevent use or disclosure of such data other than as provided for by this Agreement.

3.5 Purpose Limitation: GemCloud may only use Data for the purposes for which it obtained access. In using the data for such permitted purposes, GemCloud shall limit access to the information only to staff, subcontractors, or agents necessary to perform the permitted purposes. GemCloud may also release or disclose such information as may be Required by Law.

3.6 Non-Disclosure: Except for the disclosure required by Law or as permitted by this Agreement, GemCloud is prohibited from making any disclosures of or about such information unless in accordance with the express written instructions of the Client.

3.7 Privacy and Security Requirements: While in possession of such information, GemCloud shall apply all applicable privacy and security requirements set forth in this Agreement to maintain the confidentiality, security, integrity, and availability of such data. Notwithstanding any other provision in this Agreement, in case of non-permitted use or disclosure, GemCloud shall immediately take all reasonable and legal actions to retrieve such information if disclosed to any non-permitted individual or entity.

4. DATA BACKUP AND RECOVERY

4.1 Backup Procedures: GemCloud will perform regular backups of Client data using AWS services, maintained for a minimum of 30 days to ensure data protection and availability.

4.2 Data Restoration: In the event of data loss, GemCloud will use reasonable efforts to restore data from the most recent backup. Clients can request data restoration by contacting support.

4.3 Client Responsibilities: The Client is responsible for maintaining their own backup copies for additional recovery needs beyond GemCloud's standard services and for complying with their own data retention policies.

4.4 Limitation of Liability: GemCloud will not be liable for any loss, destruction, alteration, or unauthorized disclosure of data caused by any third party.

5. DATA SHARING

5.1 Shared Data Definition and Usage: "Shared Data" includes any data that the Client elects to share through the use of GemCloud Trader ERP. This may encompass various forms of data related to the Client's business operations and interactions. The Client shall determine which pieces of data are considered Shared Data by marking them appropriately within the GemCloud Trader ERP interface or as specified in writing between the Parties. GemCloud will not share any data unless explicitly directed by the Client.

5.2 Purpose of Data Sharing: Shared Data accessed by third-party services or GemCloud's internal products and services is used exclusively to enable functionalities that enhance the Client's business operations. The use of Shared Data is restricted to the necessary activities for services provided by third parties or GemCloud's internal products and services, with any additional processing or usage requiring prior written consent from the Client. Specific uses include:

- **(a) Online Marketplace Sales:** Facilitating sales by sharing information with the GemCloud Marketplace or other third-party online marketplaces through GemCloud-provided integrations.
- **(b) Ecommerce Solutions:** Enhancing ecommerce capabilities by sharing information with internal and external ecommerce solutions, such as GemCloud's ecommerce platform, Shopify, WooCommerce, and BigCommerce.
- **(c) Mobile Applications:** Enhancing user experience and functionality in GemCloud's mobile applications by integrating Shared Data.
- **(d) Gemological Laboratories:** Providing product information to gemological laboratories within the GemCloud ecosystem to facilitate product certification.
- **(e) Other Third-Party Integrations:** Sharing data with additional third-party services including marketing software, CRM systems, accounting software, and other integration partners to enhance operational efficiency and market reach.
- **(f) APIs:** Utilizing APIs developed by GemCloud to integrate Shared Data with other GemCloud products, internal services, or external software tools, enhancing functionality and user experience across platforms.

5.3 Client Notification and Consent: Before any data is shared, the Client will be informed, and explicit consent will be obtained. Data shared with third-party integrations will be used solely for the purposes specified and agreed upon by the Client.

5.4 Anonymous Data Collection: GemCloud and integrated third-party services may collect non-personally identifiable data for product improvement and analytical purposes. This data,

which is rendered anonymous, is utilized to enhance the functionality and performance of GemCloud services without identifying individual clients.

5.5 Data Handling Permissions: The Client authorizes GemCloud to manage the Shared Data as necessary for the purposes specified within this agreement, including the potential sharing and sublicensing of the data to trusted third-party integration partners, under the conditions that such sharing aligns with the specified uses and consent parameters outlined herein.

5.6 Liability and Responsibility: GemCloud is not liable for any breaches of data security or data inaccuracies that occur due to the actions of third-party services. The Client acknowledges that all third-party services are governed by their own terms and conditions, and it is the Client's responsibility to review these terms prior to integration to ensure they align with their operational requirements and legal obligations.

6. PROPRIETARY RIGHTS

6.1 GemCloud Proprietary Rights: The Client recognizes that GemCloud regards the Platform as its proprietary information and as confidential trade secrets of great value. The Client agrees not to provide, to otherwise make available or give access in any form to the Platform, or any portion thereof, to any person other than employees of the Client without the prior written consent of GemCloud. For such cases, the Client agrees to restrict access to those of its officers, directors, and employees who are subject to non-disclosure restrictions at least as protective as those set forth in this Agreement. The Client further agrees to treat the GemCloud Software with at least the same degree of care with which the Client treats its own confidential information and in no event with less care than is reasonably required to protect the confidentiality of the GemCloud Software.

6.2 Client Confidentiality: GemCloud acknowledges that in the course of this Agreement, it may receive confidential information from the Client, including but not limited to business plans, financial data, and client lists ("Client Confidential Information"). GemCloud agrees to use the same degree of care to protect the confidentiality of the Client Confidential Information as it uses to protect its own confidential information, and in no event with less than reasonable care. GemCloud agrees not to disclose or make available the Client Confidential Information to any third party without the prior written consent of the Client, except as required by law.

6.3 Exclusion of Technological Information: Any technological information or ideas disclosed by the Client to GemCloud shall be treated as non-confidential unless expressly stated otherwise in writing by the Client. GemCloud shall not be liable for any use or implementation of such technological information or ideas unless specifically agreed upon in a separate written agreement.

6.4 Mutual Obligations: Both parties agree that the Confidential Information disclosed by either party shall be used solely for the purposes of this Agreement. The receiving party shall not disclose any Confidential Information to any person or entity other than its employees, agents,

or subcontractors who need access to such Confidential Information to fulfill the receiving party's obligations under this Agreement and who are bound by confidentiality obligations at least as restrictive as those contained herein.

6.5 Exclusions: Confidential Information shall not include information that (i) is or becomes publicly known through no breach of this Agreement; (ii) is received from a third party without breach of any obligation of confidentiality; (iii) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or (iv) is required to be disclosed by law or by a governmental authority.

7. INTELLECTUAL PROPERTY

7.1 Ownership of Software: The Client acknowledges and agrees that GemCloud retains all rights, title, and interest in and to the Software, including any and all updates, upgrades, modifications, enhancements, and derivative works thereof, and all intellectual property rights therein. This Agreement does not grant the Client any ownership interest in the Software or any of its components.

7.2 Ownership of Improvements: Any improvements, modifications, custom developments, or derivative works made to the Software, whether made by GemCloud or at the request or suggestion of the Client, shall be owned exclusively by GemCloud. The Client agrees to assign, and hereby assigns, any and all rights, title, and interest it may have in such improvements, modifications, custom developments, or derivative works to GemCloud.

7.3 Client Data: Notwithstanding the foregoing, the Client retains all rights, title, and interest in and to any data provided by the Client to GemCloud for use in connection with the Software ("Client Data"). GemCloud's use of Client Data is governed by the terms of this Agreement and any applicable privacy laws.

7.4 License to Use Feedback: The Client may from time to time provide suggestions, comments, or other feedback ("Feedback") to GemCloud with respect to the Software. The Client agrees that all Feedback is and shall be entirely voluntary and shall not, absent a separate written agreement, create any confidentiality obligation for GemCloud. GemCloud will be free to use, disclose, reproduce, license, or otherwise distribute and exploit the Feedback as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

7.5 Third-Party Software: The Software may include components, libraries, or other software licensed from third parties ("Third-Party Software"). Any Third-Party Software included in the Software is licensed to the Client under the terms of the applicable third-party license agreements, and the Client agrees to comply with the terms and conditions of such license agreements.

8. TERM

8.1 Duration: The present Agreement shall continue unless and until terminated pursuant to the conditions stipulated in the Termination section and subject to the Client's proper performance of its obligations hereunder.

9. TERMINATION

9.1 Termination by Client:

(a) In the case that the Client has chosen the one-year payment format, the Client may only terminate the Agreement with at least 30 days prior notice before the beginning of the next billing period.

(b) In the case that the Client has chosen the monthly payment format, the Agreement can be terminated with seven (7) days prior notice before the beginning of the next payment period. The notice shall be provided via email to the following email address: billing@thegemcloud.com.

9.2 Termination by GemCloud: GemCloud reserves the right to refuse, restrict, suspend, limit, or terminate any and/or all Services provided under this Agreement for the following reasons:

- (a) Non-payment of fees by the Client.
- (b) Breach of any term of this Agreement by the Client.
- (c) If the Client uses the Services in a manner that causes or may cause damage to the Platform or interferes with the availability or accessibility of the Hosted Services to other clients.
- (d) If the Client engages in illegal or fraudulent activities.

9.3 Post-Termination Obligations: Within 30 days following the termination of this Agreement for any reason:

- (a) The Client must pay to the Company any Charges in respect of Services provided to the Client before the termination of this Agreement; and
- (b) The Provider must refund to the Client any Charges paid by the Client to the Company in respect of Services that were to be provided to the Client after the termination of this Agreement, without prejudice to the parties' other legal rights.

10. SUPPORT SERVICES

10.1 Training and Consulting: During the first six months of this Agreement, the Client may submit technical questions and requests for training regarding the use of the Software. GemCloud shall provide training and consulting to answer such questions without charge to the Client up to a maximum of three (2) hours in the first month and one (1) hour per month

thereafter for the remaining five months. Each training or consulting session will be considered one hour.

10.2 Ongoing Support and Maintenance: From the start of this Agreement, GemCloud shall provide ongoing technical support and maintenance services as part of the subscription fees detailed in the Software as a Service Agreement. These services include but are not limited to:

- (a) Regular software updates and enhancements.
- (b) Direct customer support during business hours (GMT+5).
- (c) Emergency bug fixes and troubleshooting.

10.3 Support Response and Resolution Times:

- (a) Response Time: Initial response to support queries within 4 hours during business hours (GMT+5).
- (b) Resolution Time: Resolution of critical issues within one working day.

10.4 Additional Support Hours: Should the Client require support beyond the included hours specified in Clause 8.1 or outside the scope of the ongoing support and maintenance services, additional support hours can be purchased at a rate of \$100 per hour.

11 INDEMNIFICATION

THE CLIENT AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS GEMCLOUD, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING DIRECTLY OUT OF THE CLIENT'S USE OF THE SOFTWARE IN VIOLATION OF THIS AGREEMENT.

12. WARRANTY DISCLAIMER

GEMCLOUD PROVIDES THE PLATFORM "AS IS" AND MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WHILE GEMCLOUD WILL USE REASONABLE EFFORTS TO MAINTAIN THE PLATFORM AND ENSURE IT MEETS GENERAL PERFORMANCE STANDARDS, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE HOSTED SERVICES IS WITH THE CLIENT. GEMCLOUD DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PLATFORM WILL MEET THE CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE.

13. LIMITATION OF LIABILITY

GEMCLOUD'S LIABILITY TO THE CLIENT UNDER ANY PROVISIONS OF THIS AGREEMENT FOR DAMAGES SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY THE CLIENT TO GEMCLOUD IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL GEMCLOUD BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, LOSS OF PROFITS, OR INTERRUPTION OF BUSINESS, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY, EVEN IF GEMCLOUD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. NOTICES

13.1 Method of Notice: All notices in connection with this Agreement shall be in writing and may be given by certified, registered, or first-class mail, or by email to the address or email address set forth in this Agreement or as otherwise indicated by the Client upon acceptance of this Agreement.

13.2 Effectiveness of Notice: For purposes of this Agreement, a notice shall be deemed effective upon personal delivery, or if by email, upon confirmation of receipt, or if by mail, five days after proper deposit in a mailbox.

14. SUCCESSORS

This Agreement will be binding upon and will insure to the benefit of the parties hereto and their respective representatives, successors and assigns except as otherwise provided herein.

15. GOVERNING LAW AND JURISDICTION

15.1 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of Hong Kong, without regard to its conflict of law principles.

15.2 Jurisdiction: Any dispute, controversy, difference, or claim arising out of or relating to this Agreement, including the existence, validity, interpretation, performance, breach, or termination thereof, or any dispute regarding non-contractual obligations arising out of or relating to it, shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The law of this arbitration clause shall be Hong Kong law. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English.

15.3 International Disputes: In the event of a dispute involving parties from different countries, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Additionally, any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in Hong Kong, and the parties hereby consent to the personal jurisdiction and venue therein.

16. NON-ASSIGNMENT

This Agreement and the licenses granted by it may not be assigned, sublicensed, or otherwise transferred by Client without the prior written consent of GemCloud.

17. AMENDMENTS AND UPDATES

17.1 Amendments: GemCloud reserves the right to update or amend this Agreement, including the fees and charges associated with the use of the Hosted Services, with 30 days' notice to the Client.

17.2 Notification: GemCloud will notify the Client of any material changes to this Agreement through the notification system within the GemCloud platform or via email. The updated Agreement will become effective and binding on the next business day after it is posted.

17.3 Termination Option: If the Client does not agree with a modification to the Agreement, they may terminate this Agreement by providing written notice to GemCloud within thirty (30) days after receiving notice of the modification. Continued use of the Hosted Services after the effective date of the modification constitutes acceptance of the revised terms.

17.4 Fee Adjustments at Renewal: Upon renewal of the subscription, GemCloud may adjust the fees with a 30-day advance notice. If the Client does not agree to the fee increase, they may terminate the subscription at the end of the current term by providing the required notice.

18. ENTIRE AGREEMENT

Unless you have entered into another written agreement with respect to the Software which has been signed by you and an authorized representative of GemCloud and which conflicts with the terms of this Agreement, you agree that this Agreement supersedes all prior written or oral agreements, warranties, or representations with respect to use of the Software. If any term (or part thereof) of this Agreement is found to be invalid or unenforceable, the remaining provisions (including other valid parts within the affected term) will remain effective. You acknowledge that you have read this Agreement, that you understand it, that you agree to be bound by its terms, and that this is the complete and exclusive statement of the Agreement between you and GemCloud regarding the Software. GemCloud's failure to insist upon or enforce your strict compliance with this Agreement will not constitute a waiver of any of GemCloud's rights.

Signed By:

First Name:

Last Name:

Date: