

## Terms and Conditions

### **Version 3- Effective August 2018**

#### **Terms and Conditions**

The following are the standard terms and conditions ("Terms and Conditions") that apply to your use of the Service. Receipt of an Order Form (also known as Sales Order Agreement) signed by you will constitute your acceptance of the Terms and Conditions. Please read the Terms and Conditions in conjunction with the Order Form, and any other document provided to you at the time of signing the Order Form.

#### **1. Defined terms**

"Agreement" means these Terms and Conditions and your Order Form.

"Hong Kong" means the Hong Kong Special Administrative Region.

"Order Form" means the form specifying your subscription details for the Service.

"Our magazine" refers to any publications owned or operated by REA Hong Kong Management Co. Limited, a member of the REA Group Ltd, group of companies (REA Group) responsible for maintaining our web site and all squarefoot.com.hk publications (as applicable to your subscription).

"Our web site" refers to any website owned or operated by us including the website hosted at www.squarefoot.com.hk. (as applicable to your subscription or as the context requires).

"Service" may include any of the following or a combination thereof:

- a) process that will facilitate your uploading of property details (including images) to either:
  - I. the extensive property search engine accessible on our web site; or
  - II. another internet site of your choice that has been approved by us in writing;
- b) online banner advertising and banner impressions run on our web site;
- c) advertising on our other channels including mobile sites, apps and/or social media networks/platforms;
- d) advertising in our magazine;
- e) having your properties featured on our web site;
- f) having your properties featured on our other channels incl. mobile sites, apps and/or social media networks/platforms;
- g) having your properties featured in our magazine;
- h) sending marketing communications including electronic marketing messages relating to your products/services;
- i) training;
- j) phone support; and
- k) any associated or ancillary service we agree in writing to provide to you.

"Term" means the period of this Agreement.

"We", "our", "us", "the Publisher" refers to the company set out in your Order Form; being REA Hong Kong Management Co. Limited, a member of the REA Group Ltd, group of companies (REA Group) and its employees, officers, agents, affiliates or assigned parties.

"You", "your" or "the client" or "the Advertiser" refers to you as the user of the Service.

## **2. Your Obligations and acknowledgements**

2.1 You represent and warrant in respect of each property you list on our web site that:

- (a) you are the holder of a current real estate agent's licence in the area(s) or country to which your use of the Service relates;
- (b) you have a signed authority to sell from the owner or vendor;
- (c) you are authorised to make available the material uploaded or submitted to use the Service;
- (d) you will not allow another real estate office in your real estate group to list the property using your subscription. Where a proprietor of a property authorises multiple real estate offices in your real estate group to list a property you acknowledge that:
  - (i) this does not entitle you to authorise any other person (including, without limitation, any associated offices in your real estate group) to make use of the one subscription; and
  - (ii) any such conduct is in breach of these Terms and Conditions.

2.2 You must:

- (a) comply with our Acceptable Use Policy;
- (b) only advertise properties that are currently available for purchase or lease within the area(s) or countries in which you hold a current real estate agent's licence;
- (c) only upload properties to our web site directly, or through a third party provider who has agreed to comply with our terms and conditions for uploading properties to our web site;
- (d) within seventy-two (72) hours of a sale or leasing contract being entered into for a property, either mark the property as "under contract", transfer the property to the archive database or remove that property from our web site;
- (e) when requested by us to update your listings, you must extend the listing for a further period, transfer the property to the archive database, withdraw the listing or otherwise comply with any direction we give to ensure our web site is up to date. We may remove any property from our web site if the listing is not extended, transferred to the archive database, withdrawn or otherwise updated. However it is your responsibility to remove all inactive or sold properties from the active database;
- (f) ensure that material you upload through use of the Service is not unlawful or uploaded for an improper purpose, including information that is defamatory, misleading or deceptive, in

breach of copyright or would otherwise expose us to any liability, legal proceedings or other sanction;

- (g) ensure that you do not make, arrange or authorise the insertion of any reference to us or our web site or magazine in any document (including promotional or merchandising material) or on any web site other than our web site without our prior written consent;
- (h) abide by any applicable Code of Practice (incorporating privacy and advertising codes) issued by your local internet industry professional association;
- (i) comply with any guidelines and codes issued by your local and national professional real estate agent association;
- (j) comply with all applicable laws, including without limitation, fair trading, consumer protection, privacy and antitrust or competition legislation; and any other applicable advertising standards and regulations;
- (k) ensure that:
  - (i) your username and password for accessing the Service are kept secure at all times and are only disclosed to persons authorised to incur charges on your behalf. However you are responsible for any use of the Service using your username and password by any person (whether authorised or otherwise) and, without limitation, you must pay any charges incurred as a result of that use;
  - (ii) material submitted through the Service by you refers only to listing details of a particular property;
  - (iii) the listing details for a particular property through the Service are only listed by you (including any associated offices in your real estate group) once;
  - (iv) any reference to material other than listing details for a property must receive our written approval prior to your submission;
  - (v) ensure that no other person, authorised or otherwise, makes use of Your subscription to the Service in breach of these terms and conditions; and
- (l) be responsible for any use of the Service using your subscription by any person (whether authorised or otherwise) and, without limitation, pay any charges incurred as a result of that use.

### 2.3 You acknowledge that:

- (a) you have read and agree to be bound by the terms of all legal notices posted on our web site including our Acceptable Use Policy, Privacy Policy and Legal Information notices;
- (b) by using the Service, you grant us an irrevocable, world-wide, royalty free licence to commercialise, copy, license to other persons, use and adapt for any purpose any material you generate or submit to make use of the Service;

- (c) we are not under any obligation to monitor or censor the material uploaded by you that appears on our web site. However we reserve the right to do so and to take any action we deem appropriate (including removing material from our web site without notice);
- (d) we are not responsible for the Service's content or for any errors or omissions in any property data provided by or on behalf of you;
- (e) we cannot guarantee the continuous or fault free operation of the Service; systems or technological failure may impede or prevent access to all or any part of the property data and transmission of data over the internet can be subject to errors and delays;
- (f) you are responsible for and must pay the cost of all telecommunications and internet access charges incurred when using our web site, whether or not such access has been arranged by us;
- (g) you are responsible for the security and integrity of your data;
- (h) a residential subscription to the Service provides you with the ability to list only residential properties and premises and for web-based Services this means listing only on squarefoot.com.hk and its Chinese language counterpart;
- (i) a commercial only subscription to the Service provides you with the ability to list only commercial properties and premises and for web-based Services this means listing only on squarefoot.com.hk and its Chinese language counterpart;
- (j) our products are subject to change, development and discontinuation. We will endeavor to notify you when this happens;
- (k) we will contact you from time to time to make you aware of opportunities, products and services offered by us and our business partners. You authorise us to contact you via email, SMS, MMS and other electronic media for that purpose unless you explicitly request us not to contact you via these media; and
- (l) where you provide us with personal information of an individual estate agent, you warrant that you have informed that estate agent that their personal information will be used and disclosed by us in accordance with our Privacy Policy.

### **3. Contract Term**

Unless otherwise specified and agreed by us in the Order Form, this agreement will continue for a period of twelve (12) months from the date of signature of the Order Form, or from the date that charges become due, whichever is later.

### **4. Termination of Service by you**

You agree that once the Term commences, you may not terminate the Agreement for any reason until the expiry of that Term. If you purport to terminate the Agreement, you acknowledge that the remaining fees payable under the Agreement for the remainder of the Term is a debt due to us and you agree to pay those fees within seven (7) days of your

purported termination of the Agreement. You agree that this is not a penalty, but a reasonable measure of actual damage to us as a result of your early termination.

## **5. Termination or suspension of Service by us**

5.1 We may terminate the Agreement at any time for any reason provided that we give you at least seven (7) days' written notice. Should you continue to use the Service following termination of the Agreement, you shall remain liable for any and all costs incurred by you.

5.2 Notwithstanding clause 5.1 and without limiting our other rights, we may immediately suspend or temporarily remove details of any property uploaded by you to our web site or terminate the Agreement if:

- (a) you fail to pay any fees or charges due to us by the due date;
- (b) you breach any part of this Agreement and the breach is material and not capable of being rectified;
- (c) you breach any part of this Agreement and fail to rectify that breach within seven (7) days of the breach;
- (d) you breach any warranties provided or representations made in this Agreement;
- (e) any material supplied by you (including material uploaded to our web site) is false or misleading;
- (f) you enter into bankruptcy, liquidation, provisional liquidation, administration, receivership, receivership and management, a composition of arrangement with your creditors, or appoint a receiver, manager or controller over all or any part of your assets, or are protected from creditors are under any statute, or become or are deemed to become insolvent; or
- (g) you die, or if you are in a partnership, are dissolved or an application to dissolve is filed, or if you are a company, are wound up or an application for winding up is filed.

## **6. Effect of termination (by you or us)**

6.1 Termination of the Agreement (by you or us) does not:

- (a) relieve you of your accrued obligations and liabilities pursuant to this Agreement and we reserve our right to enforce such obligations and liabilities in any event after termination; and
- (b) waive any breach of this Agreement by you.

6.2 In addition to clause 6.1, you acknowledge that:

- (a) you remain liable for all fees incurred before termination of the Agreement and you must pay all outstanding amounts to us within seven (7) days of termination; and

- (b) if you continue to use the Service following termination of the Agreement, you shall remain liable for any and all fees incurred by you (these fees may be calculated at our “out of contract” rate which is higher than our usual rates).

## **7. Deferral of advertisements**

Once you have submitted the Order Form to us, you may not defer the publication of advertisements in our magazine without our consent, which may be given or withheld at our complete discretion.

## **8. Packages, Fees and Billing**

- 8.1 We offer a number of different packages that vary in terms of price, payment terms, products and services included. You may subscribe to any of these packages but switching, or addition of special conditions to, packages is at our sole discretion.
- 8.2 The current fee for the Service is specified in the Order Form or as notified by us from time to time.
- 8.3 We reserve the right to amend the terms and conditions of the Agreement, including package components and fees, at any time. You will be given notice of any changes to our fees or package components.
- 8.4 For the client who:
  - (a) resides, or is located, in Hong Kong; or
  - (b) is a Hong Kong registered companyall payments must be made by telegraphic transfer (bank transfer) or cheque.
- 8.5 For the client who:
  - (a) resides, or is located, outside of Hong Kong; or
  - (b) is a company registered in a country other than Hong Kong(“International Client”) may make payments by telegraphic transfer (bank transfer).
- 8.6 You must pay all fees in accordance with our payment terms.
- 8.7 In the event that the Advertiser fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Publisher, the Publisher shall be entitled to:
  - (a) remove any reference or prevent access to property data submitted by you to our web site;
  - (b) levy a fee of HK\$150.00 for late payment;
  - (c) cancel the Contract and suspend any further Advertisements of the Advertiser;
  - (d) demand the immediate payment for all Advertisements placed under the Order Form or any other contract between the Publisher and the Advertiser which shall become

immediately due and payable notwithstanding the fact that the time for payment has not fallen due;

- (e) where payment has not been made within one month of the due date charge an administration fee of 7.5% of the invoice due or HK\$500.00 whichever is the greater;
- (f) charge the Advertiser interest (both before and after any judgment) on the amount unpaid at the Hong Kong Interbank Offer Rate (HIBOR) plus 3% per month (on a compounded basis) until payment in full is made (a part of the month being treated as a full month for the purpose of calculating interest);
- (g) charge the Advertiser and demand you pay, any costs incurred in pursuing non payment and collecting the overdue amount, including but not limited to collection of agency fees and legal fees, together with any bank charges and administration costs.

8.8 The Publisher may at any time, suspend or cancel an Advertiser's credit account facilities upon where payment for all advertisements placed shall become due and payable immediately.

8.9 You will pay all taxes, duties and other government charges payable in connection with the Agreement whether applying as at the date of this Agreement or in the future, but excluding taxes, duties and government charges based on our income.

## **9. Credit provisions**

9.1 By signing the Order Form, you authorise us to enquire, or carry out any credit check, with any credit reporting agency, financial institution or any other third party (collectively "Credit Third Parties") concerning your credit standing, history or capacity as we may require at any time.

9.2 You acknowledge and agree that for the purpose of making the enquiry or carrying out the credit check under Clause 9.1, personal information and/or personal credit information about you or your directors and officers will be disclosed to, or received from, the relevant Credit Third Party(ies).

## **10. Limitation of Liability and Indemnity**

10.1 To the extent allowable by law, we:

- (a) exclude all conditions and warranties implied into the Agreement;
- (b) exclude consequential, special or indirect loss or damage (including but not limited to loss of opportunity, loss of revenue, loss of data and loss of profits);
- (c) limit our liability for breach of any condition or warranty that we cannot exclude to the greater of (at our option):
  - (i) resupplying the Service; or
  - (ii) paying the cost of having the Service resupplied; and
- (d) limit our liability in respect of any other claim under or in connection with the Agreement, whether the claim is based in contract, tort (including negligence, statute or otherwise) to

the amount paid to us by you under the Agreement and reduce that liability to the extent that you cause or contribute to the loss the subject of the claim.

10.2 You must take all reasonable steps to minimise any loss you suffer or are likely to suffer and that is the subject of a claim against us under the Agreement. If you do not take reasonable steps to minimise that loss, then our liability to you for the relevant claim will be reduced accordingly.

10.3 We will not be liable under the Agreement to the extent that liability is caused by:

- (a) any breach of your obligations under the Agreement or a negligent act or omission by you; or
- (b) any delay in performance or breach of the Agreement which arises as a result of any matter beyond our control including but not limited to viruses, other defects or failure of the server hosting our web site.

10.4 You indemnify us and our officers, employees and agents ("those indemnified") against any direct or consequential liabilities, losses, damages, expenses and costs (including legal expenses on a solicitor and own client basis) incurred or suffered by any of those indemnified as a result of any claim or proceedings brought by a third party against those indemnified in connection with any material uploaded or submitted by you in connection with the Service or any other act or omission by you in connection with your use of the Service.

10.5 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of the Agreement for whatever reason.

## **11. General**

11.1 We may change these Terms and Conditions at any time by giving you prior written notice. You acknowledge that our publishing the amended version of the Terms and Conditions at this link on our web site constitutes written notice to you of such changes.

11.2 No delay or failure by us to enforce any provision of the Agreement will be deemed a waiver or create a precedent or will prejudice our rights. No waiver by us will be effective unless it is in writing and signed by us.

11.3 We will send all notices, invoices and other communications to you at the email address, prepaid post and/or facsimile number you have provided to us. It is your sole responsibility to ensure that you provide us with your current contact email address, office address and/or facsimile number.

11.4 All notices from you to us (including termination notices) must be sent to the Publisher, 15/F Mass Mutual Tower, 33 Lockhart Road, Wanchai, Hong Kong or by fax on +852 3198 1838. These contact details may be varied from time to time. It is your responsibility to check these Terms and Conditions for current contact details.

11.5 You must not assign or novate the Agreement without our written consent, or appoint an agent without our prior written consent.

- 11.6 We may assign or novate the Agreement at any time. If we assign or novate the Agreement, we will notify you of the assignment or novation.
- 11.7 The Agreement (together with any documents referred to in this Agreement or provided by us at the same time as the Agreement) comprises the entire agreement between the parties about its subject matter. It supersedes all prior understandings, agreements or representations and you may not rely on any representations or warranties about the subject matter of the Agreement except as expressly provided in this Agreement.
- 11.8 The laws of Hong Kong govern the Agreement.
- 11.9 You submit to the non-exclusive jurisdiction of the Courts of Hong Kong and you waive any right you have to object to an action being brought in a Court of Hong Kong (including that the action has been brought in an inconvenient forum, or that those Courts do have jurisdiction).
- 11.10 If any term of the Agreement is void, unenforceable or illegal, that term is severed. The remainder of the Agreement has full force and effect.
- 11.11 Our rights and remedies provided in the Agreement are in addition to any other rights and remedies given to us by law and equity independently of the Agreement.
- 11.12 If there is any inconsistency or ambiguity between the English version and the Chinese version of this Agreement, the English version shall prevail.