

# **TERMS OF USE**

## **IMPORTANT : PLEASE READ THESE TERMS OF USE CAREFULLY**

Effective Date : 7<sup>th</sup> October 2019

Welcome to the [eConfirm.my](http://eConfirm.my) website (hereinafter referred to as “**Website**”). The Website provides the Industry-Wide Electronic Bank Confirmation Platform (hereinafter referred to as “**Platform**”) which is a secure-based platform used to achieve greater efficiency and security in the audit process specifically the bank confirmation process. By virtue of substituting the paper-based confirmation process with secure electronic confirmation process, it eliminates lost confirmations and expedites the process for confirmation replies to the auditors.

The Website is owned by Extol Corporation Sdn Bhd (Company No. 121135-U) (hereinafter referred to as “**we**”, “**us**”, and “**our**”) and the Platform is provided via the Website by us in collaboration with Malaysian Institute of Accountants (hereinafter referred to as “**MIA**”). “**You**” and “**Your**” means the individual or legal entity accessing or using the Website.

These terms and conditions (hereinafter referred to as “**Terms of Use**”) govern your access and use of the Website. By accessing and using the Website, you are deemed to have read, understood, agreed and accepted the Terms of Use herein stated. Please refrain from using the Website if you do not agree to all or any of the terms and conditions specified below.

If you have any questions pertaining to the Website and/or Platform, please email us at [info@eConfirm.my](mailto:info@eConfirm.my).

### **1. Use of Website**

- 1.1 We grant you a limited, restricted, personal, non-transferable, revocable license to access and use the Website as expressly permitted in the Terms of Use.
- 1.2 The Platform is only available to individuals or legal entities appointed and authorised by the audit firms or banks which are registered under the participation agreement entered between us and the respective audit firms or banks. By registering as a user of the Platform and/or utilising the same for bank confirmation purpose, you confirm that you have the full authorisation from the registered audit firm or bank to do so failing which may render your user registration to be invalid.
- 1.3 We reserve the right to change, modify, add, or remove portions of the Terms of Use herein contained from time to time with or without any prior notice to you. The amendment notice will be posted on the Website and will only be effective thirty (30) days after the date of posting, except as otherwise stated. After such period, your continuing access and use of the Website shall constitute and be deemed to be your acceptance to such change or

modification. Therefore, you agree to review the Terms of Use regularly to be aware of such change or modification.

1.4 You agree that you must not:-

- (a) provide false, inaccurate or misleading information and you must always cooperate in any inquiry or provide confirmation of your identity or any information that you have provided to us;
- (b) use the Website in any manner that breaches any existing applicable law or regulations, Terms of Use herein , Privacy Policy or any other agreement that you or your registered audit firm or bank entered into with us;
- (c) carry out any act that alters, interferes or disrupts the safety, security and/or performance of the Website and the data that contained therein and intent or plan to harm or intentionally interfere with the aforesaid;
- (d) gain or attempt to gain unauthorised access to the Website;
- (e) disclose or re-sell your login details to any third party (including any unauthorised personnel);
- (f) commit any breach of confidence, privacy or any third party's rights, including, without limitation, intellectual property rights;
- (g) impersonate someone or adopt a false identity if the purpose is to mislead, deceive or defraud the person or engage in fraudulent activity in connection with the Website;
- (h) obtain or attempt to obtain any material or information which is not intentionally made available on the Website through any means, including but not limited to collecting information of other users on the Website;
- (i) transmit any virus, Trojan horse, malware, worm or other item of destructive or malicious nature that may damage, disrupt, corrupt, misuse, detrimentally interfere with, intercept or expropriate, or gain unauthorised access to the Website and/or Platform; or
- (j) do, or omit to do, or attempt to do any other act or thing which may interfere with the proper operation of the Website or activities or transactions carried out on the Website and/or Platform or otherwise than in accordance with the Terms of Use;

1.5 You are responsible for keeping your account, user identification and password confidential, safe and secure. You are solely responsible and accountable for all or any of the activities

conducted under such account, user identification or password. In the event that there is an unauthorised use of your account, user identification or password or that your account has been compromised, you shall immediately inform us. Any request, reply or communication via the Platform after we have received and responded to your aforesaid notice shall be invalid and ineffective. We shall not be liable and responsible, directly or indirectly, be it a civil or criminal liability, for any loss or damage by virtue of such unauthorised use of your account, user identification or password or your failure to comply with this provision.

- 1.6 The Website only provides the Platform to allow you to request, receive and/or reply the confirmations at any time. In view of this, we are not involved in the transaction between the users on the Platform and we cannot guarantee as to the accuracy, promptness and legality of the requests and replies on the Platform. We are also not responsible if there is no reply from the bank after a confirmation request is sent or have any control over the confirmation reply uploaded by the bank user into the Platform.
- 1.7 If you are the registered audit firm user, you confirm and acknowledge that:-
- (a) you and your audit firm have the full authority and permission from the governing body or authority such as MIA to submit the bank confirmation request to the bank on behalf of a third party which is you and your audit firm's client;
  - (b) you and your audit firm have obtained the necessary authorisation from the client to submit the bank confirmation request to the bank via the Platform; and
  - (c) you shall provide the correct and necessary information of the client (for bank's verification purpose) in respect of the bank confirmation request, provide additional information as may be requested by the bank, and upload a scanned copy of the authorisation letter duly signed by the client into the Platform.
- 1.8 If you are the registered bank user, you acknowledge that upon successful verification of each bank confirmation request sent to your bank via the Platform, you shall upload a scanned copy of the bank confirmation reply letter into the Platform in which you shall ensure that the information provided in respect of the bank confirmation reply is correct. You shall also provide additional information as may be requested by the audit firm user via the Platform. By replying to a confirmation request, you confirm that you have the necessary right to reply to the same on behalf of the bank you purport to represent and work for, in which case such reply is not retractable

## **2. System breakdown**

- 2.1 We shall not be liable or responsible for any loss, damage (whether special or consequential), embarrassment, expense incurred or suffered by you by reason of or in connection with the following:-

- (a) any failure, delay in transmission, interruption, errors, omission or breakdown of any equipment, system, server software or terminal of the Website and/or Platform;
  - (b) interference by computer virus, corrupted data, or malfunctions;
  - (c) failure or delay due to causes beyond our control including but not limited to causes like strikes, industrial action, civil disturbances, flood, earthquake, landslides or acts of God or computer, electronic, communications or electrical systems failures of any nature whatsoever, breakdown, interruptions, non-supply, failure in the supply of electricity or power for any length of time; or
  - (d) any operation malfunction or defect of your computer terminal, systems or software used in accessing the Website.
- 2.2 We reserve the right to investigate and take legal action against you if you are suspected to have caused the service breakdown while using the Website.

### **3. Privacy Policy**

Our Privacy Policy applies to the use of this Website and is made part of the Terms of Use. By accessing and using this Website, you hereby agree that we may collect, hold, store, process, use and transfer your personal data including the bank confirmation document uploaded into the Platform in accordance with our Privacy Policy as provided in the Website.

### **4. SSL Certificate**

- 4.1 You will receive and transmit the information (including the requests and replies herein) to us or the targeted user over the Internet using SSL technology and 2048-bit encryption. You must use the Internet browsers that will support the use of the foregoing.
- 4.2 In order to initiate a session where such information is transmitted, you will either select and use the user identification and password or click a login link that leads to a login page.
- 4.3 Pursuant to Clause 4.2, the targeted user and us shall be entitled to rely in all instances that the information so transmitted has been transmitted by you, that such information is true, accurate and complete in all respects, with the same effect and intent as if such information had been transmitted in written form bearing your written signature.

### **5. Intellectual Property**

- 5.1. All intellectual property rights, whether registered or unregistered, including but not limited to trademarks, service marks, proprietary information, programs, source code, object code, goodwill, copyrights, logos, designs, trade names and the entire contents on the Website including but not limited to text, images, sounds, videos, graphics, software and their arrangement are wholly owned by us and/or our affiliates and are fully protected by the

applicable laws. We also own copyright and/or database right in the selection, coordination, arrangement and enhancement of such content on the Website, as well as in the content original to it.

- 5.2 The Terms of Use do not constitute a sale agreement and do not transfer, convey or assign to you any right, title or interest in or to the Website except for the limited license to access and use the Website as permitted pursuant to the Terms of Use.
- 5.3 If you are the bank user and you upload the confirmation reply document into the Platform, it is deemed that you have granted us exclusive, sub-licensable and transferable license to store and make it available on the Platform for the user who had made the request to access and download it within a certain time period.
- 5.4 You acknowledge and agree that you shall not:
  - (a) license, sub-license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available the Website and/or Platform to any third party in any way;
  - (b) modify, copy, retransmit, broadcast, display, reproduce, publish, create derivative works, or in any way exploit, any of the content, trademark, or other proprietary information, in whole or in part without our express prior written consent;
  - (c) create internet "links" to the Website or "frame" or "mirror" any material contained on the Website on any other server;
  - (d) take any action that imposes an unreasonable or disproportionately large load on our infrastructure;
  - (e) reverse engineer or access the Website in order to:-
    - (aa) build a competitive product or service;
    - (bb) build a product using similar ideas, features, functions or graphics of the Website, or
    - (cc) copy any idea, feature, function or graphic from the Website;
  - (f) access, monitor or copy any content or information of the Website using any robot, spider, scraper or other automated means or any manual process for any purpose without our express prior written consent;
  - (g) remove or modify any copyright, trademark or other proprietary right notice contained in or on the Website; or

- (h) remove, circumvent, disable, damage or otherwise interfere with any security-related features of the Website, features that prevent or restrict the use of copying of the Website or features that enforce limitations on the use of the Website.

5.5 We may resort to any available legal and/or equitable remedies, which may include a demand for actual or statutory damages, legal fees, and injunctive relief in the event of a breach of our intellectual property rights herein contained.

## 6. Indemnity

6.1 You agree and covenant to fully indemnify and hold harmless us and our affiliates, licensors, officers, directors, members, employees, and agents from and against all claims (including but not limited to third party claims), liabilities, losses, damages, penalties, actions, judgments, costs, expenses or disbursements (including but not limited to legal fees on a solicitor-client basis) of any kind whatsoever, directly or indirectly, arising from:-

- (a) your use of and access to the Website including any data or content transmitted or received by you;
- (b) any breach or non-compliance by you of any law or the Terms of Use including the unauthorised use of Platform and/or the information obtained through the Platform;
- (c) any action, inaction or omission by you in any matter whatsoever pertaining to the Website and/or the Platform; or
- (d) your violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right.

6.2 We will not be a party to any dispute or negotiation between the users and the targeted users and you shall hold us harmless from and against all claims (including but not limited to third party claims), demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of any way connected with such dispute or negotiation.

6.3 This indemnity by you herein shall survive the suspension or termination of your account, or the blockage or prevention of the use of the Website.

## 7. Disclaimer

7.1 Notwithstanding the information, materials and contents on the Website (hereinafter referred to as "**the Contents**"), you agree that the Contents herein are provided on an "as is" and "as available" basis. You are under an obligation to seek independent legal advice, or other advice as you shall deem necessary before visiting, browsing, using and/or maintaining an account on the Website.

- 7.2 We hereby disclaim any express or implied warranty or representation including but not limited to warranties of title, non-infringement, merchantability and fitness for a particular purpose, accuracy, usefulness, timeliness or completeness of any information.
- 7.3 We make no warranty whatsoever to you, express or implied, regarding the security of the Website, including without limitation the ability of the unauthorised persons to intercept or access information transmitted or received by you through the Website.
- 7.4 We do not warrant or represent that your use and access to the Website, the materials, contents, information and/or functions contained therein will be provided uninterrupted or free from errors or that any identified defect shall be corrected, or that there shall be no delay, failures, errors or loss of transmitted information, that no viruses, or other contaminating or destructive properties shall be transmitted or that no damage shall occur to your computer system.
- 7.5 Any risk of misunderstanding, error, damage, expense or loss resulting from the use of the Website is entirely at your own risk and we shall not be liable thereof.

## **8. Limitation of Liability**

- 8.1 We, our affiliates, officers, directors, members, employees, and agents shall not in any event be liable to you or any party for any direct, indirect, punitive, incidental, economic, special, consequential or exemplary damages or losses of any type or kind (including, without limitation, damages for personal injury, emotional distress and loss of profits, goodwill, data, goods, or other intangible losses) that result from the use or inability to use the Website and/or the Platform.
- 8.2 We, our affiliates, officers, directors, members, employees, and agents assume no responsibility and liability for any loss and damage whatsoever or howsoever caused, either directly or indirectly, arising from:-
- (a) errors, mistakes or inaccuracies of the content on the Website;
  - (b) an illegal access to or use of the Website by a third party;
  - (c) reliance by you on any data or information made available through the Website;
  - (d) any system, server or connection failure, error, omission, interruption, delay in transmission, computer virus, bugs or other malicious, destructive or corrupting code, agent program or macros;
  - (e) any act, omission or conduct of any third party in connection with or related to your use of the Website.

- (f) any damages caused by a force majeure event; or
- (g) any act by us that is not intentional or negligent.

8.3

## **9. Access Termination**

9.1 Without limiting any other remedies, we reserve the right to issue a warning, temporarily or permanently suspend or terminate your access and/or use of the Website at any time in the event that:-

- (a) you violate any of the Terms of Use herein, the Privacy Policy and/or any other agreement entered between you or your registered audit firm or bank and us;
- (b) we are unable to verify or authenticate any information provided by you to us; or
- (c) we believe in our sole opinion that your action may cause financial loss or legal liability for us, you and/or other users on the Platform.

## **10. Miscellaneous**

10.1 Notice:-

Any notice given to any party shall be deemed to have been served if the same is in writing and is sent to the address of the recipient by personal delivery, email or fax for which a receipt is obtained or if served by registered post, three (3) business days after the date of posting.

Our address is as per below (unless stated otherwise):-

Extol Corporation Sdn Bhd  
1-40-1, Menara Bangkok Bank,  
No 105, Jalan Ampang,  
50450 Kuala Lumpur

10.2 Waiver:-

Any delay or failure by us in exercising any right under the Terms of Use herein contained shall not operate as a waiver of such right or extend to or affect any other or subsequent event or impair any right or remedy in respect of it or in any way modify or diminish our rights under the Terms of Use.

10.3 Severability:-



Any term, condition, stipulation, provision, covenant or undertaking herein contained which is illegal, void, prohibited or unenforceable shall be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof.

10.4 Assignment:-

You shall not assign, transfer, novate, create any trust over or deal in any other manner any of your rights, obligations, covenants, undertakings and any other relevant rights governed by the Terms of Use herein without our prior written consent. However, we reserve the right to assign, transfer or novate all or any of our rights, obligations, covenants, undertakings and any other relevant rights under the Terms of Use to any third party in the event of merger or acquisition.

10.5 Governing Law:-

The use of the Website and the Terms of Use shall be governed and construed in accordance with the laws of Malaysia and by accessing the Website, you hereby agree to submit to the exclusive jurisdiction of the Courts of Malaysia in all disputes pertaining to the use of the Website.

10.6 Customer Support:-

The customer support is available between 9.00 a.m. – 6.00 p.m. from Monday to Friday excluding any day which is a public holiday in the Federal Territory of Kuala Lumpur. You may reach our customer support via telephone or email at any phone number or email address specified on our Website.