Regulations on the Protection of Computer Software of the People’s Republic of China

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Copyright Law of the People’s Republic of China for the purpose of protecting the rights and interests of computer software copyright owners, regulating the relationship of interests arising from the development, dissemination and use of computer software, encouraging the development and application of computer software, and promoting the development of the software industry and the informatization of the national economy.

Article 2 — For the purposes of these Regulations, the term ‘computer software’ (hereinafter referred to as ‘software’) means computer programs and their related documentation.

Article 3 — For the purposes of these Regulations, the following terms shall have the meanings set forth below: (1) ‘Computer program’ means a sequence of coded instructions that can be executed by a device having information processing capability, such as a computer, or a sequence of symbolic instructions or symbolic statements that can be automatically converted into a sequence of coded instructions, for the purpose of obtaining a certain result; the source code and the object code of a computer program are the

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same work. (2) ‘Documentation’ means written materials and diagrams, which are used to describe the content, structure, design, functional performance, historical development, testing results and usage of a program, such as program design specifications, flowcharts, and user manuals. (3) ‘Software developer’ means a legal entity, unincorporated organization or natural person that actually organizes or directly carries out the development work and assumes responsibility for the developed software. (4) ‘Software copyright owner’ means a natural person, legal entity or unincorporated organization that enjoys software copyright in accordance with these Regulations.

Article 4 — Software protected under these Regulations must be developed independently by the developer and must be fixed on a tangible medium.

Article 5 — Chinese citizens, legal entities or unincorporated organizations shall enjoy copyright in the software they have developed, whether published or not, in accordance with these Regulations. The software copyright protection for foreigners and stateless persons shall be governed by the relevant provisions of the Copyright Law of the People’s Republic of China.

Article 6 — The protection of software copyright under these Regulations shall not extend to the ideas, processing, operating methods, mathematical concepts or the like used in developing the software.

Article 7 — A software copyright owner may register the software copyright with a software copyright registration authority recognized by the copyright administration department of the State Council. The registration authority shall issue a registration certificate. The registration certificate issued shall be prima facie evidence of the registered matters. Fees for software copyright registration shall be set by the registration authority and shall be approved by the price administration department of the State Council.

Chapter II — Software Copyright

Article 1 — A software copyright owner shall enjoy the following rights: (1) the right of publication, that is, the right to decide whether to make the software available to the public; (2) the right of authorship, that is, the right to claim authorship and to have the developer’s name mentioned in connection with the software; (3) the right of alteration, that is, the right to supplement or abridge the software, or to change the sequence of instructions or statements; (4) the right of reproduction, that is, the right to produce one or more copies of the software; (5) the right of distribution, that is, the right to provide the original or copies of the software to the public by sale, donation or other means; (6) the right of rental, that is, the right to authorize others to temporarily use the software for a fee, unless the software is not the main object of the rental; (7) the right of communication through information networks, that is, the right to provide the software to the public by wire or wireless means so that the public may access the software at a time and place individually chosen by them; (8) the right of translation, that is, the right to convert the software from one natural language into another natural language; and (9) other rights that shall be enjoyed by the software copyright owner.

Article 2 — The software copyright shall belong to the software developer, unless otherwise provided in these Regulations. Where there is no proof to the contrary, the natural person, legal entity or unincorporated organization named in the software shall be the developer.

Article 3 — Where software is jointly developed by two or more natural persons, legal entities or unincorporated organizations, the ownership of copyright shall be determined by a written agreement among the co-developers. In the absence of a written agreement or if the agreement is not explicit, the copyright shall be jointly owned by the co-developers. Where the jointly developed software can be divided into independent parts and used separately, the developer of each independent part may independently enjoy copyright in that part, provided that the exercise of such copyright does not prejudice the copyright in the joint work as a whole. Where the jointly developed software cannot be divided and used separately, the copyright shall be jointly owned by the co-developers and shall be exercised by consensus; in the absence of consensus and without justifiable reasons, no party may prevent the other parties from exercising any right

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other than the right of transfer, provided that the proceeds obtained shall be reasonably distributed among all co-developers.

Article 4 — Where software is developed under commission, the ownership of copyright shall be determined by a written agreement between the commissioning and the commissioned parties. In the absence of a written agreement or if the agreement is not explicit, the copyright shall belong to the commissioned party.

Article 5 — Where software is developed under a task assigned by a state organ, the ownership and exercise of copyright shall be determined by a project assignment document or a contract. In the absence of explicit provisions in the project assignment document or the contract, the copyright shall belong to the legal entity or unincorporated organization accepting the assignment.

Article 6 — The term of protection for software copyright of a natural person shall be the lifetime of the natural person and 50 years after his or her death, expiring on December 31 of the 50th year after his or her death. Where the software is jointly developed, the term shall expire on December 31 of the 50th year after the death of the last surviving developer. The term of protection for software copyright of a legal entity or unincorporated organization shall be 50 years, expiring on December 31 of the 50th year after the first publication of the software; where the software has not been published within 50 years from the completion of its development, it shall no longer be protected under these Regulations.

Article 7 — During the term of software copyright protection, a software copyright owner may transfer all or part of the software copyright and shall enter into a written contract for such transfer. A software copyright owner may also license others to exercise the software copyright and shall enter into a written license contract. In the absence of a written agreement or if the agreement is not explicit in the license contract, it shall be deemed that no exclusive license has been granted and that the right of sublicense has not been granted.

Chapter III — Licensing, Transfer and Registration

Article 1 — An exclusive license contract for software copyright and a transfer contract for software copyright may be registered with the software copyright registration authority recognized by the copyright administration department of the State Council.

Article 2 — Where a Chinese copyright owner licenses or transfers software copyright to a foreigner, the provisions of the Regulations on the Administration of Technology Import and Export of the People’s Republic of China shall apply.

Article 3 — Where software copyright is pledged as security, the pledgor and the pledgee shall go through the pledge registration formalities with the software copyright registration authority recognized by the copyright administration department of the State Council.

Article 4 — The software copyright registration authority may charge fees for software copyright registration. The fee rates shall be set by the copyright administration department of the State Council in conjunction with the price administration department of the State Council.

Chapter IV — Limitations on Copyright

Article 1 — A user of software may, without permission from and without payment of remuneration to the copyright owner, install, display, transmit or store the software for the purpose of studying or researching the design ideas and principles embodied in the software.

Article 2 — A lawful owner of a copy of software may, without permission from the copyright owner: (1) install and use the software on a computer or other device with information processing capability according to the needs of use; (2) make a backup copy for the purpose of preventing damage to the copy, provided that such backup copy shall not be provided to any other person for use and shall be destroyed when the owner loses

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the lawful ownership of the copy; (3) make necessary alterations to the software for the purpose of using it in the actual computer application environment or to improve its functions or performance, unless otherwise agreed in the contract; and (4) where the software is used for classroom teaching, scientific research, or for execution by a state organ for official duties within a reasonable scope, a small quantity of copies may be made, provided that the name of the software and the name of the developer shall be indicated.

Article 3 — Where software is developed on the basis of learning from and studying the design ideas and principles of other software, the copyright in the resulting software shall not infringe the copyright in the original software.

Article 4 — The provisions of Article 23 of the Copyright Law of the People's Republic of China concerning limitations on copyright shall apply to the limitations on software copyright.

Chapter V — Legal Liability

Article 1 — Unless otherwise provided in the Copyright Law or in these Regulations, any person who commits any of the following infringing acts shall, according to the circumstances, bear civil liability such as ceasing the infringement, eliminating the effects, making an apology, or compensating for losses: (1) publishing or registering software without the permission of the copyright owner; (2) publishing or registering software developed by another person as one's own; (3) publishing or registering software jointly developed with another person as one's own without permission of the co-developer(s); (4) having one's name mentioned in connection with software developed by another person or altering the name mentioned in connection with the software; (5) altering or translating software without the permission of the copyright owner; or (6) committing other acts of infringing software copyright.

Article 2 — Unless otherwise provided in the Copyright Law or in these Regulations, any person who commits any of the following infringing acts shall, according to the circumstances, bear civil liability; where public rights and interests are concurrently impaired, the copyright administration department may order the cessation of the infringing act, confiscate illegal gains, confiscate or destroy the infringing copies, and may concurrently impose a fine; where the circumstances are serious, the copyright administration department may also confiscate the materials, tools, equipment and other articles mainly used for making the infringing copies: (1) reproducing or partially reproducing the software of the copyright owner without permission; (2) distributing, renting, or communicating through information networks the software of the copyright owner to the public without permission; (3) intentionally circumventing or destroying the technical measures taken by the copyright owner for protecting the software copyright; (4) intentionally removing or altering the electronic rights management information of the software without permission; or (5) transferring or licensing the software copyright to another person without permission.

Article 3 — The amount of damages for infringing software copyright shall be determined in accordance with the provisions of Article 49 of the Copyright Law of the People's Republic of China. The amount of damages may also be calculated by reference to the reasonable royalties that would have been paid under a license for the lawful exploitation of the software, or by reference to the illegal gains obtained by the infringer.

Article 4 — Where a software copy is used without the permission of the copyright owner by a holder of the software copy who does not know and has no reasonable grounds to know that the copy is an infringing copy, such holder shall not bear compensation liability but shall cease using and destroy the infringing copy. Where the cessation of use and destruction of the infringing copy would cause significant losses to the user of the copy, the user of the copy may continue to use the copy after paying reasonable compensation to the copyright owner.

Article 5 — Software copyright infringement disputes may be resolved through mediation, or the parties may apply for arbitration to an arbitration institution under an arbitration agreement reached between the parties or under the arbitration clause in the contract. Where no arbitration agreement has been reached and no

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arbitration clause is contained in the contract, the parties may directly bring a lawsuit in a people's court.

Chapter VI — Supplementary Provisions

Article 1 — The protection of software copyright shall be governed by these Regulations. Matters not covered in these Regulations shall be governed by the relevant provisions of the Copyright Law and other relevant laws and administrative regulations.

Article 2 — Where software copyright owners and publishers go through the formalities of software copyright registration in accordance with these Regulations, it shall be regarded as the registration of works as prescribed in the Copyright Law.

Article 3 — The term 'software copyright' as used in these Regulations shall have the same meaning as 'software copyright' as used in the Copyright Law.

Article 4 — These Regulations shall be effective as of January 1, 2002. The Regulations on the Protection of Computer Software promulgated by the State Council on June 4, 1991 shall be repealed simultaneously. These Regulations were subsequently revised in 2011 and 2013 to enhance the protection of software intellectual property rights and promote innovation in the software industry.

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