



HGC Global Communications Cloud Services Agreement

Last updated on December 7, 2015

This Cloud Services Agreement (this “Agreement”) dated as in the Service Order Form (“Start Billing Date”) by and between the Client (“Client”), whoever with an office or residential address, as listed in aforementioned Service Order Form, and HGC Global Communications Limited (“HGC”) with its office registered at 17/F, Hutchison Telecom Tower, 99 Cheung Fai Road, Tsing Yi, Hong Kong, to set forth the terms and conditions pursuant to which HGC shall provide to Client certain Services (as defined in Section 1.11). Unless otherwise agreed to in writing by both parties, all Service Order Forms entered into between the Client and HGC are hereby incorporated by reference to this Agreement and will be bound by and form part of this Agreement.

Please note that this Agreement contains two important components: “Terms and Conditions” and “Acceptable Use Policy”. This agreement may include additional documents if Services purchased require Client to comply with further conditions.

TERMS AND CONDITIONS

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1 AGREEMENT DEFINITIONS

In this Agreement, the following words and expressions shall have the following meanings:

1.1 **“Acceptable Use Policy”** or **“AUP”** means a set of rules, describing how Client may use the Services and what actions and sanctions HGC may take in event of breach.

1.2 **“Client Content”** means the Third Party Software that Client installs and hosts on the Services, and any other content, materials or data that Client uses, installs, uploads or hosts on the Services.

1.3 **“Cloud Services”**, means, collectively, the HGC services listed in the Service Order Form and defined in the Service Specifications, including IaaS, PaaS and/or SaaS, provided to Client in accordance with this Agreement. The term “Cloud Services” does not include Professional Services.

1.4 **“Cloud Service Portal”** means a web portal provided HGC to Client that enables User to manage and administer certain functions of Cloud Services on its own.

1.5 **“Content”** means software (including machine images), data, text, audio, video, images or other content.

1.6 **“Excusing Event”** means (i) Client’s act or omission, or an act or omission of an User or third party for which Client is responsible, including failure to supply accurate, complete, and timely information when requested; (ii) a Force Majeure Event (as described in Section 11.1(a)); (iii) routine or emergency maintenance of the Services; (iv) defects in Third Party Software or HGC’s loss of license rights or restrictions imposed by third party licensors with respect to Third Party Software; (v) unavailability of necessary technology or other resources on commercially reasonable terms; (vi) any operating system, database, application or other code or materials not provided by HGC, including configuration issues in connection with the foregoing; (vii) any act or omission of a third party that is not caused by HGC (for example, hacking, denial of service attacks and the introduction of viruses), provided that HGC uses reasonable efforts to maintain current versions of Software patches; (viii) compliance with any applicable law or requests of governmental entities; (ix) any scheduled maintenance; or (x) any destruction, damage, loss or theft of or to any HGC’s equipment or materials; in each case that adversely and materially affects HGC’s ability to provide the Services.

1.7 **“Infrastructure as a Service”** or **“IaaS”**, if applicable, means the HGC service to provision processing, storage, networks, and other fundamental computing resources as a cloud infrastructure, comprising physical and Virtual Servers, delivered as a hosted service and made remotely accessible to Client.

1.8 **“Platform as a Service”** or **“PaaS”**, if applicable, means the HGC service offering a cloud infrastructure to Client to deploy Client-created or acquired applications created using Third Party Software, including programming languages and tools.

1.9 **“Professional Services”**, if applicable, means, collectively, the consulting and other professional services which Client has ordered in association with the Cloud Services. Professional Services include any deliverables described in the Service Order Form and delivered by HGC to Client under the order. The term “Professional Services” does not include Cloud Services.

1.10 **“Public Software”** means software or similar subject matter that is distributed under an open source licence, or any software or similar subject matter that is distributed under similar licensing or distribution terms.

1.11 **“Services”** means, collectively, both the Cloud Services and Professional Services that Client have ordered, if applicable.

1.12 **“Service Order Form”** means the service order or service quotation provided to Client by HGC for signature that describes the Services purchased by Client and accepted by HGC.

1.13 **“Service Specifications”**, means the descriptions for the Cloud Services as may be supplied by HGC, as may be amended from time to time.

1.14 **“Software”** means the licenced software used to provide Client the ordered Cloud Services, including, without limitation, monitoring software, billing software, trouble ticketing software, data collection and process control software, cloud portal, service provisioning software.

1.15 “**Software as a Service**” or “**SaaS**”, if applicable, means the HGC service offering comprising software applications, running on a cloud infrastructure, made available for use by Client, accessible remotely by Client from various client devices through a thin client interface.

1.16 “**Third Party Software**” means any third party software, including both proprietary third party software and Public Software, that are obtained or derived from third party sources outside of HGC and made available to Client through, within, or in conjunction with Client’s use of, the Cloud Services.

1.17 “**User**” means those employees, contractors, and end users, as applicable, authorised by Client or on Client’s behalf to use the Services in accordance with this Agreement and the applicable Service Order Form.

1.18 “**Virtual Server**”, if applicable, means the logical server computer partitioned from a physical server computer such that it has the appearance and capabilities of running on its own dedicated machine as a Service provided to Client by HGC.

2 NATURE

Pursuant to this Agreement, HGC shall sell and provide to Client, in consideration for the applicable fees as set forth in a Service Order Form where applicable: (i) Cloud Services; and (ii) Professional Services, under the terms and conditions of this Agreement.

The Services will be provided in accordance with the specifications set forth in the Service Specification(s) attached to this Agreement and/or in any Service Order Form(s) attached hereto and made a part hereof.

3 SERVICE ORDERING

3.1 **Service Order Form.** Client and HGC may execute one or more Service Order Forms describing the Services that Client desires to purchase from HGC. Each Service Order Form shall set forth the Services to be provided by HGC, the Service Specifications applicable to each such Service, the prices and payment schedule, the Initial or Minimum Term of such Services (as set out in the applicable Service Order Form) and other information the parties may mutually agree upon. No Service Order Form shall be effective until executed by HGC.

3.2 **Conflicts.** All Service Order Forms will be subject to the terms and conditions of this Agreement; provided however, that in the event of conflict between the terms contained in any Service Order Form and terms in this Agreement, the terms contained in the Service Order Form shall control. In the event of conflict between terms in this Agreement (including any applicable Service Order Form) and terms contained in any Client-issued order form or purchase order, the terms of this Agreement (including any applicable Service Order Form) shall control.

3.3 **Cancellation.** In the event that (i) Client cancels or terminates a Service Order Form at any time for any reason, other than expiration of a Service Order Form; or (ii) HGC terminates a Service Order Form or this Agreement pursuant to Section 8, Client agrees to pay HGC all monthly charges specified in the Service Order Form for the balance of the term therefor, which shall accelerate and become due and payable on the effective date of such cancellation

or termination. Upon the cancellation or termination of a Service Order Form by Client, HGC shall, upon Client's written request, give all reasonable cooperation and assistance to Client to assure an orderly and efficient transition.

3.4 **IP Addresses.** HGC will assign, if applicable, on a temporary basis, a reasonable number of Internet Protocol Addresses ("IP Addresses") from the address space assigned to HGC by InterNIC. Client acknowledges that such IP Addresses are the sole property of HGC, and are assigned to Client as part of, and in connection with, the Services, and are not "portable", as such term is used by InterNIC. HGC reserves the right to change IP Address assignments at any time; however, HGC shall use reasonable efforts to avoid any disruption to Client resulting from such renumbering requirement. HGC will give Client reasonable notice of any such renumbering. Client acknowledges and agrees that it will have no right to IP Addresses upon termination of this Agreement or any applicable Service Order Form, and that any renumbering required of Client after termination shall be the sole responsibility of Client.

4 SOFTWARE LICENCE AND RIGHTS

4.1 **Licence.** HGC adopts virtualization technologies to create virtual environments for Clients (as the case may be). All Software are owned by HGC and/or its third party software partners. During the term of any applicable Service Order Form, HGC grants or will procure to grant Client a non-transferable, non-exclusive licence to use the Software in object code form only, solely on the Hardware or HGC's equipment used in conjunction with the Services.

4.2 **Proprietary Rights.** This Agreement transfers to Client neither title nor any proprietary or intellectual property rights to the Software, documentation, or any copyrights, patents, trademarks or any other intellectual property embodied or used in connection therewith, except for the rights expressly granted in Section 4.1 of this Agreement. Client shall:

4.2.1 not claim or assert title to or ownership of the Software (or modifications thereto), or remove or alter any copyright or proprietary notice from copies of the Software;

4.2.2 use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software; or

4.2.3 not export or re-export the Software without the written consent of HGC, its Software licensor and the appropriate government authorities.

4.3 **Licence Restrictions.** Client agrees that it will not, nor through any of its parent, subsidiary, affiliate, agent or other third party:

4.3.1 copy the Software except as expressly allowed under this Agreement. In the event Client makes any such permitted copies of the Software, Client shall reproduce all proprietary notices of HGC on any such copies;

4.3.2 reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the Software;

4.3.3 sell, lease, licence, sub-licence, modify, time share, outsource, or otherwise use or transfer the Software or the documentation to any third party;

4.3.4 write or develop any derivative software or any other software program based upon the Software or any Confidential Information (as defined in Section 10);

4.3.5 use the Software to provide processing services to third parties, or otherwise use the Software on a 'service bureau' basis; or

4.3.6 alter or attempt to change the settings on the Software products or rights of use intellectual property on the Software.

Additional restrictions may apply to certain files, programs or data supplied by third parties or embedded in Software which are set out in the instructions or release notes and/or in the form of end user licence terms and are incorporated herein by reference.

4.4 **Further Assurances.** Client shall at all times keep HGC informed of any known non-compliance or threatened non-compliance with the AUP, and shall provide HGC or its Software licensor(s) with all necessary assistance in enforcing these provisions.

4.5 **Injunctive Relief.** Client acknowledges that HGC or any Third Party Software licensors shall have the right to obtain injunctive relief against actual or threatened violation of the restrictions or intellectual property rights, in addition to any other available remedies.

4.6 **Software Representations and Warranties.** HGC represents and warrants that: (i) it has the right, power and authority to grant the Software licence to Client pursuant to this Agreement free of all liens, encumbrances and other restrictions; (ii) the Software shall operate and run in accordance with the Service Specifications indicated in the applicable Service Order Form; (iii) to the reasonable knowledge of HGC, the licence furnished by HGC hereunder and/or the use of the Software by Client in accordance with the terms and conditions herein or in any Service Order Form, will not infringe upon nor violate any patent, copyright, trade secret, or other proprietary right of any third party; and (iv) Client's use and possession of the Software consistent with the terms of this Agreement, shall not be adversely affected, interrupted or disturbed by HGC or any entity asserting a claim under or through HGC.

4.7 **Audit.** HGC may audit (or allow its Software licensor(s) to audit) the use of the Software by the Client. Any such audit shall be conducted during regular business hours in Client's premises and shall not unreasonably interfere with Client's business activities. Where Charges (as defined below) associated with the use of the Software are charged according to the level of usage, if an audit reveals that Client has understated the use by more than five percent (5%), Client shall be invoiced for the understated capacity and shall bear the cost of the audit. Otherwise HGC shall bear the cost of the audit.

4.8 **Client's Right to Use Software.** Client's right to use Software shall terminate upon expiration or termination of the applicable Service Order Form or this Agreement. Client shall (a) de-install the Software from any Cloud Service upon which they have been installed and (b) destroy the media and all documentation associated with the Software promptly upon the written request of HGC, Client shall certify in writing to HGC (or its Software licensors if HGC so directs) that the Software have been de-installed and the media and all documentation have been destroyed if so requested by HGC. Termination of this Agreement or the applicable Service Order Form shall not release Client from the obligations of this Section 4.

4.9 **Trial of Services.** From time to time, Client may accept Cloud Services for trial use (the "Trial Service"). Trial Service is a non-exclusive evaluation service over a limited time agreed among the Parties ("Trial Period"). During the Trial Period, Client may not use the Trial Service for development, commercial, production, database management or other non-trial purposes. Client accepts the Trial Service on an AS IS basis and agrees that HGC and its agents, contractors, sub-contractors, third party equipment and third party service providers or/and affiliated companies grant no warranties or conditions (including implied warranties or merchantability and fitness for a particular purpose) to Client and accept no liability whatsoever resulting from the use of such Trial Service. Notwithstanding the foregoing, the provision of Sections 4.2, 4.3, 4.4 and 4.5 shall apply to the Trial Service. Client shall have no obligation regarding the Trial Service during or following the Trial Period, except to honour the warranties and indemnities specified in Section 12. Either party upon written notice to the other may cancel the Trial Service. Upon termination or expiration of the Trial Period, Client shall either execute a Service Order Form relating to the use of the Trial Service in accordance with the terms of this Agreement or return to HGC the Trial Service in accordance with the terms of Section 4.8.

5 PRICING AND PAYMENT TERMS

5.1 **Payment Terms.** Client shall pay HGC for Services on the following basis:

5.1.1 Client shall pay:

(a) The charges specified as payable in the Service Order Form in respect of the Services (the "Charges");

(b) The full amount of any invoice submitted to Client in accordance with this Agreement (including all applicable taxes, tariffs, duties or impositions of a similar nature imposed by any government or other authority) shall be payable by Client by the due date without setoff or deduction.

5.1.2 Payment is due on the date Client receives HGC's invoice unless specified otherwise in the invoice. If full payment is not made by the due date, HGC may charge interest on a daily basis on all sums outstanding at the rate of two percent (2%) per month from the due date of payment to the date when full payment is received by HGC, and charge Client a collection fee and handling fee.

5.1.3 If any Charges stated in any invoice are not queried within fifteen (15) days of the date of the invoice then such Charges shall be deemed accepted by Client, if applicable.

5.1.4 HGC will invoice Client: (a) monthly in advance for subscription to (and/or monthly charges for) the Services; and (b) monthly in arrears for usage charges; but HGC may at its sole discretion amend the invoicing period and submit interim invoices to Client. The installation Charge (if applicable) will be included in the first invoice to Client. Client shall be liable for such subscription or monthly charges for the Services whether used by Client or not. Pre-paid Charges are non-refundable unless HGC in its sole discretion decides otherwise.

5.1.5 HGC may demand a deposit from Client to secure payment of any sum due to HGC and may at any time vary such deposit amount at HGC's sole discretion. HGC may apply such

deposit to reduce or pay any sum due by Client to HGC on whatsoever account at any time. Client shall fund up the deposit by paying an amount equals to the reduced amount into Client's accounts as may be required by HGC from time to time. No interest shall accrue on any deposit held by HGC. Any deposit remaining following this Agreement's termination shall be returned to Client after deducting any such sums due to HGC when the balance is claimed by Client in writing within 3 months of the date of termination.

5.1.6 HGC reserves the right to apply a credit limit for Charges incurred by Client and to suspend Client's access to Services, in whole or in part, if such limit is exceeded.

5.1.7 HGC may transfer or apply any credit balance in Client's favour to settle any amount owed by Client to HGC or to any company within the HGC Group of companies (each a "HGC Company") whether under this Agreement or any other arrangement between Client and HGC or any HGC Company. Client hereby authorises HGC to make payment on Client's behalf out of such credit balance (if any) to set off any amount owed by Client to any such HGC Company from time to time. Client agrees that any credit or payment information held by HGC and any of its affiliate company about Client is held for the same purpose.

5.1.8 Client acknowledges that HGC's appointed agent may invoice Client on HGC's behalf and such invoice shall be valid as if rendered by HGC. Such invoice shall not prejudice any rights of HGC to subsequently claim against Client.

5.1.9 Should HGC invoice Client in respect to any Content as agent for a third party Content and/or third party equipment provider, HGC is not the supplier of or responsible for such Content and/or third party equipment.

5.1.10 In case of disputes over any usage or other Charges, HGC's decision based on its Services usage records and those of any third party who may assist HGC to provide the Services shall be final and binding on Client.

5.2 **Additional Fees.** HGC may, with the prior written consent of Client, charge Client additional Fees ("Additional Fees") on a time and materials basis at HGC's then-current rates for any of the following: (a) re-establishment or other assistance requested by Client outside the scope of the applicable Service Order Form; and (b) re-establishment of the Services following Service Suspension pursuant to Section 7.

5.3 **Late Payments.** In the event of non-payment by Client of sums over-due by the due date, HGC has the right to terminate the applicable Service Order Form or this Agreement as HGC may determine.

5.4 **Price Increases.** Notwithstanding anything to the contrary set forth herein, HGC shall not increase the prices for services during the Initial or Minimum Term of the applicable Service Order Form, but may thereafter increase prices at any time.

5.5 HGC may, upon written notice to Client, retain any Hardware or other assets of Client in HGC's possession as security for payment and due compliance of any other obligations under this Agreement and sell them in satisfaction of any unpaid sums or other compensation awarded to HGC with respect to any default under this Agreement.

5.6 After the expiry of the Initial or Minimum Term of the applicable Service Order Form, save for the Service was terminated pursuant to Section 8, Client agrees to continue to subscribe the Service and to pay the monthly charges based on the tariff price of that Service as published or the current listed price by HGC from time to time after the Initial or Minimum Term.

6 MAINTENANCE AND SUPPORT

6.1 **Support.** HGC shall provide Client with maintenance and support of any Cloud Service (“Maintenance and Support”) as specified herein, if applicable.

6.2 **Exclusions.** Maintenance and Support shall not include services for problems arising out of (a) modification, alteration or addition or attempted modification, alteration or addition of the Cloud Service undertaken by persons other than HGC or HGC's authorised representatives or (b) Client Content or hardware supplied by Client.

6.3 **No Accessories or Peripheral Devices Connection (If applicable).** No facility is provided for Client to use accessories or peripheral devices, such as USB attachments or licence key dongles, with any Cloud Service.

7 SUSPENSION

7.1 **Suspension.** HGC reserves the right to suspend or restrict Client's access to the Services, by first providing to Client a suspension notice if (i) Client breaches this Agreement; (ii) Client violates the AUP; (iii) Client fails to pay any undisputed Fees when due; or (iv) as the result of any Excusing Event (collectively, “Service Suspensions”). Any Cloud Service or the Service in question may be unavailable during a Service Suspension. HGC will use commercially reasonable efforts to provide notice to Client on any Service Suspension and Service resumption. Without limitation of Section 11, HGC will have no liability for any damages, liabilities, or losses resulting from any Service Suspension.

8 TERM AND TERMINATION

8.1 **Term.** The term of this Agreement shall commence on the earlier of the Commencement Date and the Start Billing Date (as set out in the first Service Order Form with the Client) and continue indefinitely unless terminated in accordance with this Section 8 or the provisions contained in the AUP. The Initial or Minimum Term of each Service Order Form shall be as indicated therein and each Service Order Form shall automatically renew for successive additional terms equal to the period of the Initial or Minimum Term unless either party notifies the other, in writing, not less than thirty (30) days prior to the end of any term that it has elected to terminate a Service Order Form, in which case such Service Order Form and the Service contained therein shall terminate at the end of the applicable term.

8.2 **Termination Upon Default.** Subject to Section 8.3, either party may terminate this Agreement or a Service Order Form in the event that the other party materially defaults in performing any obligation under this Agreement and such default continues unremedied for a period of ninety (90) days following written notice of default.

8.3 Termination Upon Non-Payment. In the event of non-payment by Client of sums overdue by the due date, HGC has the right to immediately terminate (i) this Agreement; or (ii) the applicable Service Order Form without any further obligation or liability.

8.4 Termination Upon Insolvency. This Agreement or a Service Order Form shall terminate, effective upon delivery of written notice by a party (as specified in that notice), (i) upon the institution of insolvency, receivership or bankruptcy proceedings of the other party; (ii) upon any order of a court requiring the other party to pay any amount exceeding HK\$50,000 for the settlement of debts; (iii) upon the making of an assignment for the benefit of creditors by the other party; or (iv) upon the dissolution of the other party.

8.5 Termination for Licence(s) Being Revoked. HGC may terminate this Agreement immediately if a licence(s) necessary for the provision of services contemplated under this Agreement are suspended, cancelled, revoked or terminated.

8.6 Effect of Termination. Upon termination of this Agreement, all charges due under all Service Order Forms shall accelerate and become due and payable on the effective date of such termination. The provisions of the AUP and Sections 3.3, 9, 10, 11, 12, and 13 shall survive termination of this Agreement. All other rights and obligations of the parties shall cease upon termination of this Agreement other than any rights or obligations accrued prior to termination.

8.7 For the avoidance of doubt, the termination of a Service Order Form does not terminate this Agreement, nor all other Service Order Forms entered into hereunder. The termination of this Agreement terminates all Service Order Forms entered into hereunder.

9 DATA PROTECTION

9.1 Both Client and HGC shall comply with the Personal Data Privacy Ordinance (Cap.486), as amended from time to time, and any applicable data protection legislation, regulations, codes of practices, or guidelines which may subsequently be introduced.

9.2 The Client acknowledges and agrees that personal data may be processed as a result of Services being provided.

9.3 The Client authorises the processing of personal data and agrees to notify Users about the processing for the purposes of this Agreement and/or in accordance with the Client's instructions from time to time.

9.4 HGC may authorise a third party to process the personal data for the purposes of this Agreement.

10 CONFIDENTIALITY

10.1 Client and HGC each agree and undertake that during the term of this Agreement and thereafter it will keep confidential and will not use for its own purposes or without the prior written consent of the other party disclose to any third party any and all information concerning the terms of this Agreement (or the business or affairs of the other party which may become known as a result of the performance of this Agreement) unless such information is in the public domain other than as a result of a breach of this Section 10 or is reasonably

necessary to enable the performance of the Services by any third party. This Section 10 shall not apply to disclosures to the Office of Communications Authority in Hong Kong or as required by law or regulations. Each party undertakes to the other to take all reasonable steps as shall from time to time be necessary to ensure compliance with the provisions of this Section 10 by its employees, agents, contractors, sub-contractors and affiliated companies.

11 LIMITATION OF LIABILITIES

11.1 Subject to Section 11.5 below:

(a) HGC shall not be liable to Client in the event that HGC is unable to perform an obligation or provide the Services to Client because of any factor outside HGC's control (including without limitation denial of service attacks, strikes or labor disputes, acts of civil disobedience, acts of war, default or failure of a third party, governmental action, and other force majeure events), Internet access or related problems beyond the demarcation point of the Services, interruption of Services or HGC's refusal to provide Services pursuant to the provisions of this Agreement.

(b) All conditions, warranties and representations implied by law in relation to the provision of the Services by HGC are excluded unless otherwise specified in this Agreement. Without limitation to the foregoing, HGC shall not be liable to Client for any failure, delay, malfunction or non-performance of the Services or any function, or any consequential or indirect loss or damage of the Client, relating thereto directly or indirectly due to, if applicable:

- (i) Client's or third party services, hardware, or software;
- (ii) any of the information provided by Client under or pursuant to this Agreement is found to be false or HGC has reasonable ground to believe that such information is false or inaccurate;
- (iii) Client's failure to adhere to any required configurations, use supported platforms, or follow the AUP;
- (iv) Client's failure to adopt HGC's guidelines or advice to a proper use / modification of a Service, such as incorrect software configuration;
- (v) Client's or User's unauthorised action or inaction inclusive of Client, Client's employees, agents, contractors, vendors, or anyone gaining access to HGC's Service by means of Client's passwords or equivalent;
- (vi) any failure of Services caused by Client or User;
- (vii) any unpaid or suspended Service;
- (viii) pre-release, beta or Trial Services (as determined by HGC); or
- (ix) the advent of year 2000.

(c) In no event will HGC, its employees, agents or sub-contractors be liable for any loss incurred by or any damage howsoever caused to Client or any Person arising out of or in connection with this Agreement or any Services provided or omitted to be provided under this Agreement, whether in contract, tort 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.

(d) Without limiting sub-sections (a), (b) and (c) above, HGC and other third party suppliers including without limitation any information provider shall not be under any liability whatsoever (whether in tort, contract or otherwise) to Client or to any person for any cost,

expense, loss, damage or compensation arising out of or in connection with any incorrect record, omission, transmission, communication, mixing or divulging of data or any loss or any destruction of data.

11.2 Any claim by Client against HGC arising out of this Agreement must be notified in writing to HGC within one (1) month of the incident giving rise to such claim failing which Client will be deemed to have waived Client's rights in respect of such claim.

11.3 Nothing under this Section 11 shall limit or exclude HGC's liability which is not permitted to be limited or excluded under Hong Kong law.

11.4 HGC's employees, agents, contractors, sub-contractors, third party equipment and third party service providers and affiliated companies shall have the benefit of the rights, exclusions and limitations of the provisions in this Section 11 as if such provisions were expressly for their benefit. To the extent of this Section 11, HGC is entering into this Agreement not only on its own behalf, but also as agent and trustee for such employees, agents, contractors, sub-contractors, third party equipment and third party service providers and affiliated companies.

11.5 Notwithstanding anything else in this Agreement, HGC's liability for all claims arising out of this Agreement shall be limited to:

(a) with respect to all other liabilities:

(i) the total amount of charges paid by Client under the applicable Service Order Form to HGC with respect to that Service's Initial or Minimum Term;

(ii) in the case of services, the supply of the services again; or

(iii) in the case of any other goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired, as HGC may determine at its absolute discretion.

The above remedies constitute the sole and exclusive remedies available to the Client and the satisfaction of HGC's entire liability.

11.6 Client's emails may be blocked, delayed or prevented from being delivered by destination email servers and other reasons outside of HGC's control. Client's payment obligations continue regardless of whether delivery of your emails is prevented, delayed or blocked.

12 CUSTOMER WARRANTIES AND INDEMNITIES

12.1 Client warrants at the date of this Agreement and throughout the term of this Agreement, that:

(a) it has the full right, power and authority to enter into and perform its obligations under this Agreement;

(b) it will not use the Services for any illegal, unlawful, immoral, or improper purpose;

(c) it owns or has obtained all the necessary consents and licences (including the right to sub-licence to HGC where appropriate) in respect of any intellectual property rights contained in each and every part of Client Content, and that the use by HGC of Client Content will not infringe any intellectual property or similar rights of any third party;

(d) everything contained in Client Content will be accurate, complete and true and that Client Content will not be illegal or unlawful anywhere in the world and will not breach any law or code affecting advertising anywhere in the world;

(e) nothing contained within Client Content is obscene, offensive or defamatory against any person or would give rise to any claim (whether in contract, tort or otherwise) by any person;

(f) the use by HGC of Client Content will not breach any law or regulation or infringe any rights of any third party;

(g) it is fully responsible for whether selected Services are suitable for the intended activities and achievements planned by itself. HGC refuses to take specific or comprehensive safeguards on matters which are not described in this Agreement or the applicable Service Order Form;

(h) it shall document and promptly report all errors or malfunctions of the Cloud Services to HGC;

(i) it is obliged to cooperate with HGC to help investigate any interruption of Service, security problems, and any other violation of this Agreement;

(j) it shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from HGC;

(k) it shall understand the necessary level of security and caution, including the storing and sharing of Client Content with the Services. Moreover, it's required to comply with the legislation that governs the applicable Client Content on the Services that are used, and will follow the AUP;

(l) it shall understand that maintaining copies of Client Content is not part of Services. HGC thus is not responsible for any loss of Client Content. It shall backup copies of Client Content outside the HGC servers;

(m) it shall properly train its personnel in the use and application of the Cloud Services;

(n) it shall supply to HGC its correct and complete information (including without limitation name, address, telephone number, or business registration certificate number as may be required) and notify HGC of any change or alteration to that information in writing as soon as practicable;

(o) it will not reproduce, download, frame, mirror, display, or create derivative works of or otherwise modify any Services;

(p) it will not decompile, disassemble, or otherwise reverse engineer any Services;

(q) it will not access or use any Services in order to build any competing product or service;

(r) it will not remove, obscure or alter any trademarks, brand names, or other proprietary notices appearing on or contained within any Services; and

(s) it will not licence, sub-licence, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise make available any Services to any third party, or use any Services on a service bureau basis or otherwise to provide services to any third party.

12.2 Client shall indemnify and keep HGC and its agents, contractors, sub-contractors, third party equipment and third party service providers or/and affiliated companies indemnified against any action, liability, cost, claim (including any third party claims), loss, damage, proceeding, expense (including legal costs on solicitor and own client basis) suffered or incurred by HGC or its agents, contractors, sub-contractors, third party equipment and third party service providers or affiliated companies anywhere in the world in any way arising from:

(a) any breach by Client of any of its obligations, representations or warranties under this Agreement or the AUP;

(b) the provision of the Services to Client except to the extent of loss arising directly from HGC's intentional default or gross negligence;

(c) Client Content, including any third party claiming any interest in Client Content, any claims arising from any act alleged to be illegal, claims for defamation, infringement of intellectual property rights, damage to cloud infrastructures and respective data, loss of data or distribution of obscene or offensive material.

13 MISCELLANEOUS

13.1 **No Agency.** Nothing contained in this Agreement shall be construed as constituting or evidencing any partnership, agency or contract of employment between the parties.

13.2 **Notices.** Any notice or other communication to be given under this Agreement shall be in writing and shall be served by leaving it or sending it by facsimile or by electronic means or prepaid post to the addresses of the parties specified in this Agreement or as are notified by either party to the other from time to time. Any notice or communication given under this Agreement shall be deemed to be served/ received by the other party within forty-eight (48) hours of posting, or immediately upon faxing if the transmission report indicates that the fax transmission was successful or immediately upon sending the e-mail.

Notices to HGC should be addressed as follows:

HGC Global Communications Limited, 17th Floor, Hutchison Telecom Tower, 99 Cheung Fai Road, Tsing Yi, Hong Kong
Fax: +852 2128 3388

Notices to Client should be addressed to Client's Name and Address as listed in aforementioned Service Order Form.

13.3 **Assignment.** HGC may assign or transfer this Agreement or all of its rights and/or obligations hereunder. Client shall not assign, transfer, charge or sub-licence all or part of Client's rights or obligations under this Agreement without HGC's prior written consent.

13.4 **Governing Law.** This Agreement is subject to the laws of Hong Kong and the parties submit to the non-exclusive jurisdiction of the courts of Hong Kong.

13.5 **Governing Language.** This Agreement is available in an English version and may be available in a Chinese version. The English version is the governing version and shall prevail whenever there is any discrepancy or inconsistency between the English version and any Chinese version.

13.6 **Entire Agreement.** This Agreement is the complete and exclusive statement of the agreement between Client and HGC, and supersedes all understandings or prior agreements, whether oral or written, and all representations or other communications between Client and HGC. Any variations or additions to this Agreement are only valid if confirmed in writing by an officer authorised by HGC. HGC may amend these terms and conditions from time to time in accordance with its licence, such amendments to take effect immediately upon compliance with such Licence or at such later date as specified in any such amendment. Continued use of the Services constitutes Client's acceptance of such amendments.

13.7 **Waiver.**

13.7.1 The failure of either party to enforce (or delay in enforcing) at any time for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of such terms and conditions or of the right of such party at any time subsequently to enforce all terms and conditions of this Agreement.

13.7.2 The terms and conditions of this Agreement are subject to the terms and conditions of HGC's published tariff (if any) for the Services from time to time. However, HGC may, in its absolute discretion waive any provisions of the tariff which are inconsistent with any term or condition of this Agreement to the extent of the inconsistency.

13.8 **Severance.** Any term or condition of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This shall not affect the validity or enforceability of that term or condition in any other jurisdiction. All other terms and conditions shall remain in full force and effect.

13.9 **Rights.** All rights granted to either party shall be cumulative and not exhaustive of any rights and remedies provided by law, and no exercise or partial exercise by either party of any right under this Agreement shall restrict or prejudice any further or other exercise thereof or the exercise of any other right granted by this Agreement or otherwise available to it.

13.10 **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, Client shall not directly solicit, nor directly attempt to solicit the services of any employee or sub-contractor of HGC, without the prior written consent of HGC.

13.11 **Substitution.** HGC, may substitute, change or modify the hardware and software at any time, but shall not thereby alter the technical parameters of the Services. In the event of any infringement or any threatened infringement of third party rights relating to any hardware and software, HGC may at its option remove such hardware and software in such event the remaining payment obligations with respect to Client's use of such hardware or software shall be terminated.

13.12 **Staffing.** HGC shall be solely responsible for staffing decisions with respect to its personnel and the provision of any Services and shall have the right to remove or replace any of its personnel assigned to perform Services.

ACCEPTABLE USE POLICY

1 PURPOSE

1.1 This Acceptable Use Policy (this “Policy”) provided by HGC governs any use of the Services. This Policy describes important responsibilities, unacceptable practices, and limitations and restrictions on the use of the Services. HGC may suspend or terminate the Services for any violation of this Policy.

1.2 This Policy is intended to support secure and reliable use of the Services for Client and any User. Client agrees to comply with this Policy in connection with the use of the Services. Client further agrees not to authorize, encourage, promote, facilitate or instruct others to violate this Policy.

1.3 This Policy applies to all Users of the Services, including Users of applications and services that are made available by HGC and/or by Client. If Client enables or permits any User to access the Services, whether directly or indirectly, Client agrees to ensure that such User have comprehensive knowledge of and comply with this Policy. Client is responsible and liable for any acts and omissions of such Users.

2 SECURITY

2.1 Client agrees to keep the User log-ins and passwords that are used to access the Services (“User Credentials”) confidential and stored securely so that unauthorised persons do not have access to the Services.

2.2 Client is responsible and liable for all interaction with the Services that occurs in connection with User Credentials issued by HGC to Client.

2.3 Client agrees to use industry-standard, up to date anti-virus software at all times when accessing or using the Services, and that the Client will not store or transmit any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is harmful or invasive or that may, or is intended to, damage or hijack the operation of, or monitor the use of, any hardware, software or equipment.

2.4 Client must remove or quarantine any Client Content that is corrupted with malicious code or harmful to the Services immediately upon discovery.

2.5 Client agrees to comply with best business practices for security measures.

3 ABUSE, UNLAWFUL AND OTHER PROHIBITED ACTIVITIES

3.1 Client agrees not to use the Services to participate, encourage or promote illegal, abusive, fraudulent activities or to demonstrate irresponsible behaviour including without limitation:

(a) unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of HGC;

(b) unauthorised monitoring data or traffic on any network or system without the express authorization of HGC;

(c) any activities or conduct that interference with the Services to any user, host or network including without limitation mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;

(d) any activities or conduct that is likely to be in breach of any applicable laws, codes or regulations behaviour including without limitation child pornography, gambling or piracy;

(e) any activities or conduct that lead to denial-of-service attack (“DoS attack”) to the servers or networks of HGC or its agents, contractors, sub-contractors, third party equipment and third party service providers or affiliated companies;

(f) any activities or conduct that probe, scan, penetrate or test the vulnerability of the servers or networks of HGC or its agents, contractors, sub-contractors, third party equipment and third party service providers or affiliated companies or breach HGC's security or authentication measures, whether by passive or intrusive techniques, without HGC's express written consent;

(g) infringement or violation of copyrights, software licences, trademark rights or other intellectual property law;

(h) any activities or conduct that deny others access to a Service;

(i) impersonation of anyone (including any representative of HGC), to falsely state or otherwise misrepresent Client’s affiliation with any person or entity, to conduct “phishing” or similar activities or to commit identity theft;

(j) invading anyone's privacy by attempting to harvest, collect, store, or publish private or personally identifiable information, such as passwords, account information, credit card numbers, addresses, or other contact information without their knowledge and consent;

(k) transmission of any materials that would give rise to criminal or civil liability, that encourage conduct that constitutes a criminal offense, or that encourage or provide instructional information about unlawful activities or activities such as hacking, cracking or phreaking;

(l) use of any false, misleading or deceptive TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting;

(m) use of the Services to operate open proxies, open mail relays, web crawlers, daemons (such as Internet Relay Chat daemon), BitTorrent or similar peer-to-peer applications, game server applications, video streaming programs and other similar services; and

(n) use the Services to operate a pyramid or Ponzi scheme.

4 E-MAIL USAGE AND SPAM

4.1 Client agrees not to use the Services to distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like “spam”), including commercial advertising and informational announcements.

4.2 Client agrees all e-mail or messages that distribute, publish, send from the Services must comply with all applicable laws, rules, regulations, and industry codes, such as Unsolicited Electronic Messages Ordinance (UEMO, Cap. 593 of laws of Hong Kong) and Unsolicited Electronic Messages Regulation (UEMR, Cap. 593A of laws of Hong Kong). HGC is not the “sender” as defined in the UEMO.

4.3 Client agrees to use the Services to send notification e-mails or messages only to parties who have agreed to receive such notification from Client.

4.4 Client agrees not to collect replies to e-mail or messages sent from another Internet service provider if those e-mail or messages violate this Policy.

4.5 Client agrees not to host any device or service that allows e-mail to be sent between third parties not under Client’s authority or control.

4.6 Client agrees not to use the Services in connection with an open mail relay, including, without limitation, an open mail relay in the form of an SMTP server, unrestricted web form, or otherwise.

5 INTELLECTUAL PROPERTY

5.1 Client agrees not to use the Services in a manner that infringes on or misappropriates the rights of a third party in any work protected by copyright, trade or service mark, invention, or other intellectual property or proprietary information of any third party.

5.2 Client agrees to ascertain all materials are not subject to any third-party Rights or have obtained the applicable Rights holders’ express written permission before using, distributing, transmitting, performing, displaying, modifying, reproducing, uploading or downloading those material through the Services.

5.3 HGC reserves the right to remove or block access to any material uploaded, hosted or stored ,distributed, transmitted by Client if HGC suspects on reasonable grounds that it does or can infringe, misappropriate or violate any HGC or third-party Rights.

6 OFFENSIVE CONTENT

6.1 Client agrees not to use the Services to store, publish, copy, archive, process, display or transmit any content or links to content that HGC reasonably believes that:

(a) contains, constitutes or encourages child pornography, bestiality, non-consensual sex acts, or is otherwise morally repugnant;

(b) contains, incites or encourages violence, threatens violence, or contains harassing content or hate speech;

- (c) is defamatory or violates a person's privacy or any right of publicity;
- (d) creates safety or health hazards in the lives of individuals;
- (e) violates or improperly exposes trade secrets or other confidential information owned by others or infringes a third party's intellectual property right;
- (f) contains, or encourages or incites hatred or discrimination or adversely affect the equal opportunities, including but not limited to by way of sex, race, or age, colour, nationality, national origin, ethnicity;
- (g) involves theft, fraud, drug-trafficking, illegal gambling, money laundering, arms-trafficking, the proliferation of weapons of mass destruction, or terrorism; (h) denounces political or religious beliefs;
- (i) is illegal, solicits or is likely to encourage conduct that is illegal under laws applicable to Client or HGC; or
- (j) constitutes unfair competition.

6.2 HGC takes no responsibility for any material created or accessible on or through the Services.

7 COOPERATION WITH AUTHORITIES

7.1 HGC reserves the right to conduct investigations into fraud, violations of this Agreement or other laws or regulations, and to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing, including disclosing the identity of Client that HGC deems responsible for the wrongdoing.

8 VIOLATION OF THIS POLICY

8.1 If HGC has reasonable grounds to believe that Client or a User breaches or violates this Policy, HGC may suspend or terminate the Services and block any traffic immediately without prior notice.

8.2 Client agrees that it will immediately notify HGC and take all necessary actions at its disposal to prevent activities in breach of this Policy from continuing or happening again once it becomes aware of the activities.

8.3 Client shall defend, indemnify, hold harmless HGC from and against all liabilities and costs (including reasonable attorney's fees) arising from any and all claims by any person arising out of Client's use of the Services, including without limitation, if applicable:

- (a) investigate or otherwise respond to any suspected violation of this Policy;
- (b) remedy any harm caused to HGC or any of HGC's Clients;
- (c) respond to complaints; and

(d) have HGC's IP Addresses removed from any "blacklist".

8.4 No service credit or compensation will be provided for any interruptions of the Services under this Agreement, the applicable Service Order Form and Service Level Agreement resulting from violation of this Policy.