



# HGC MARKETPLACE PRODUCTS SALES TERMS AND CONDITIONS

## 1. Definitions and interpretation

1.1 In these Sales Terms, the following words and expressions shall have the following meanings:

1.1.1 **"Acceptable Use Policy"** or "AUP" means a set of rules, describing how Customer may use the Products and what actions and sanctions HGC may take in event of breach.

1.1.2 **"Amounts Past Due"** has the meaning ascribed to it in Section 5.2.2.

1.1.3 **"Charges"** has the meaning ascribed to it in Section 5.2.1(a).

1.1.4 **"Customer Content"** means the Third Party Software that Customer installs and hosts on the Products, and any other content, materials or data that Customer uses, installs, uploads or hosts on the Product.

1.1.5 **"Customer Order"** means the service order or service quotation (in HGC's format) provided to Customer by HGC for signature or e-signature or acceptance that describes the Products purchased by Customer and accepted by HGC.

1.1.6 **"Content"** means software (including machine images), data, text, audio, video, images or other content.

1.1.7 **"Excusing Event"** means (i) Customer's act or omission, or an act or omission of a User or third party for which Customer is responsible, including failure to supply accurate, complete, and timely information when requested; (ii) a Force Majeure Event (as described in Section 13.2 (a)); (iii) routine or emergency maintenance of the Services or Products; (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 or Products.

1.1.8 **"Initial or Minimum Term"** shall have the meaning ascribed to it in Section 5.5.

1.1.9 **"Product"** or **"HGC Marketplace Product"** shall have the meaning ascribed to it in Section 2.1.

1.1.10 **"Professional Service"** shall have the meaning ascribed to it in Section 2.2.

1.1.11 **"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.

1.1.12 **"Sales Terms"** means these HGC Marketplace Products Sales Terms and Conditions, as may be amended or supplemented from time to time.

1.1.13 **"Service"** or **"Services"** means, collectively, both the Subscription Service and the Professional Service that Customer have ordered, if applicable.

1.1.14 **"Specifications"**, means the descriptions for the Product as may be supplied by HGC, as may be amended from time to time.

1.1.15 **"Subscription Service"** has the meaning ascribed to it in Section 2.2.

1.1.16 **"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 Customer through, within, or in conjunction with Customer's use of, the Subscription Service.

1.1.17 **"User"** means those employees, contractors, and end users, as applicable, authorised by Customer or on Customer's behalf to use the Services or the Products in accordance with this Agreement and the applicable Customer Order.

1.2 The expressions "Customer" and "HGC" shall include their respective successors and permitted assigns.

1.3 Any reference in these terms to Sections or Clauses shall be to sections or clauses of these Sales Terms.

1.4 Any undertaking by a Party to do or not to do any act or thing shall be deemed to include an undertaking to procure or not to permit or suffer the doing of that act or thing. In case, pursuant to the Applicable laws, any obligations of Supplier hereunder requires a licensed party to perform such obligations, Supplier shall procure such licensed party to perform the said obligations and references to "Supplier" in such case shall include such licensed party.

1.5 Words in the singular shall include the plural and vice versa.

1.6 The headings in these Sales Terms are for convenience only and shall not affect the construction of these terms.

## 2. Account and HGC Marketplace Products

2.1 You ("**Customer**") must establish an account with HGC Global Communications Limited, a Hong Kong company ("**HGC**"), in accordance with HGC's requirements and as a condition of placing an order These terms and conditions (these "**Sales Terms**"), as published on HGC's Web site located at <https://www.hgcbiz.com/en/terms-and-conditions> or its successor site ("**HGC Website**") at the time of sale, govern all purchases of the following products and services (collectively "**Products**" or "**HGC Marketplace Products**" or individually "**Product**" or "**HGC Marketplace Product**"):-

(a) products and services purchased or ordered through HGC's Cloud Marketplace website, currently located at URL: hgcmarketplace.com (the "**Site**"); and

(b) such products or services purchased or ordered by means (including but not limited to conventional or physical order or



quotation) other than through the Site, with reference to or made subject to these Sales Terms.

2.2 HGC Marketplace Products comprise the following categories:-

(i) any physical or (where applicable) electronic item of goods, products, equipment, hardware, peripheral, tokens, coupons or other non-service item ("**Non-Service Product**");

(ii) any service provided on the basis of a service period or subscription period, which is subject to renewal for recurrent service, whether purchased or procured by payment of cash or redemption of purchased tokens or coupons, or otherwise ("**Subscription Service**"); and

(iii) any service provided on one-off or non-recurrent basis, including without limitation, consulting, project management or other professional services, whether purchased or procured by payment of cash or redemption of purchased tokens or coupons, or otherwise ("**Professional Service**").

### 3. Nature

3.1 Pursuant to the relevant Customer Order and Contract, HGC shall sell and provide to Customer, in consideration for the applicable fees as set forth in the Customer Order where applicable: (i) Non-Service Product; (ii) Subscription Service; and (iii) Professional Service, under the terms and conditions of these Sales Terms and the terms and conditions of the relevant Customer Order and Contract.

3.2 The Product will be provided in accordance with the specifications set forth in the Specification(s) attached to the relevant Customer Order(s) and/or Contract and made a part thereof.

### 4. Orders

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

4.2 Customer orders are offers to purchase Products subject to these Sales Terms. HGC may decline any order for any reason. HGC's acceptance of Customer's order is limited to these Sales Terms without any modification, or exception. Additional terms and conditions on any Customer document will have no effect i.e. will not change or add to these Sales Terms whether or not HGC specifically objects to those terms and conditions. These Sales Terms may only be modified by a written agreement signed by Customer and an authorized HGC representative. Customer, on behalf of itself and the customer for whom the Product is purchased, consents to the transfer of Customer's and end customer's email addresses, when such transfer is required to complete a transaction. Customer will not disclose any confidential information when ordering from HGC. Customer will protect the confidentiality of its account number(s), username(s) and password(s) and not transfer them to any third party. Customer may only place orders via any HGC-approved ordering method. HGC has no obligation to confirm the validity of any order placed or the authority of the person placing an order using the Customer's account number. Customer bears all risk of unauthorized purchases by third parties using

Customer's account number or password. Orders for non-standard products including products configured to Customer's specifications are non-cancelable and non-returnable. Customer may not change, cancel or reschedule any orders without HGC's written consent.

4.3 The provision of each Product by HGC to Customer shall be governed by:

(a) these Sales Terms; and

(b) the relevant Customer Order

which together form a contract between HGC and Customer ("**Contract**"). All Contracts together form the entire agreement between the parties with respect to the provision by Supplier of all Products (the "**Agreement**").

4.4 Cancellation. In the event that (i) Customer cancels or terminates a Customer Order for Subscription Service at any time for any reason, other than expiration of the relevant order or agreement; or (ii) HGC terminates a Customer Order for Subscription Service or a Contract pursuant to Section 8 of these Sales Terms, Customer agrees to pay HGC all monthly charges or annual charges as specified in the Customer Order for the balance of the term therefor, which shall accelerate and become due and payable on the effective date of such cancellation or termination.

4.5 Conflicts. All Customer Orders will be subject to these Sales Terms; provided however, that in the event of conflict between the terms contained in any Customer Order and these Sales Terms, the terms contained in the relevant Customer Order shall prevail. In the event of conflict between a Contract (including any applicable Service Order and these Sales Terms) and terms contained in any Customer-issued order form or purchase order, the terms of the Contract shall prevail.

### 5. Pricing and Payment Terms

5.1 Quoted prices are subject to change without notice and, unless specifically included in a quote or invoice, do not include any taxes, handling, shipping, transportation, duties or other charges or fees. Customer is responsible for all applicable fees and all state and other government taxes on the sale and delivery of Products. Exemption certificates (if applicable), valid in the place of delivery, must be presented to HGC prior to shipment if they are to be honored. HGC's acceptance of Customer's order occurs at time of shipment, except for non-standard products.

5.2 Customer shall pay HGC for the Products on the following basis:

5.2.1 Customer shall pay:

(a) The charges/prices specified as payable in the Customer Order in respect of the Products (the "**Charges**");

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

5.2.2 Payment is due on the date Customer receives HGC's invoice unless specified otherwise in the invoice. Customer may not deduct any amounts owing from any invoice with the prior written approval from HGC. Customer's obligation to make timely payment is a material element of these Sales Terms and if breached will cause HGC damage. If full payment is not made by the due date, HGC may charge interest on a daily basis on all sums outstanding ("**Amounts Past Due**") 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 Customer a collection fee and handling fee and all costs of collection including reasonable attorneys' fees.

5.2.3 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 Customer, if applicable.

5.2.4 HGC will invoice Customer for different categories of Products as follows:-

(i) In respect of Subscription Services, HGC will invoice Customer: (a) monthly or annually in advance for subscription to (and/or monthly or annual charges for) the Subscription Services, as set forth in the applicable Customer Order(s); and (b) monthly or annually in arrears for usage charges, as set forth in the applicable Customer Order(s); but HGC may at its sole discretion amend the invoicing period and submit interim invoices to Customer. The installation Charge (if applicable) will be included in the first invoice to Customer. Customer shall be liable for such subscription or monthly charges for the Services whether used by Customer or not. Pre-paid Charges are non-refundable unless HGC in its sole discretion decides otherwise; and

(ii) In respect of Non-Service Products and Professional Services, HGC will invoice Customer one-off payment in advance.

5.2.5 HGC may demand a deposit from Customer 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 Customer to HGC on whatsoever account at any time. Customer shall fund up the deposit by paying an amount equals to the reduced amount into Customer'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 Customer after deducting any such sums due to HGC when the balance is claimed by Customer in writing within 3 months of the date of termination.

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

5.2.7 HGC may transfer or apply any credit balance in Customer's favour to settle any amount owed by Customer 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 Customer and HGC or any HGC Company. Customer hereby authorises HGC to make payment on Customer's behalf out of such credit balance (if any) to set off any amount owed by Customer to any such HGC Company from time to time. Customer agrees that any credit or payment information held by HGC and any of its affiliate company about Customer is held for the same purpose.

5.2.8 Customer acknowledges that HGC's appointed agent may invoice Customer 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 Customer.

5.2.9 Should HGC invoice Customer 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.

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

5.3 Additional Fees. HGC may, with the prior written consent of Customer, charge Customer 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 Customer outside the scope of the applicable Customer Order; and
- (b) re-establishment of the Subscription Services following Service Suspension pursuant to Section 9.

5.4 Late Payments. In the event of non-payment by Customer of sums over-due by the due date, HGC has the right to terminate the applicable Customer Order or Contract as HGC may determine.

5.5 Price Increases. Notwithstanding anything to the contrary set forth herein, HGC shall not increase the prices for services during the initial service/subscription period of the applicable Customer Order in respect of a Subscription Service ("**Initial or Minimum Term**"), but may thereafter increase prices at any time.

5.6 HGC may, upon written notice to Customer, retain any hardware or other assets of Customer in HGC's possession as security for payment and due compliance of any other obligations under a Contract and sell them in satisfaction of any unpaid sums or other compensation awarded to HGC with respect to any default under the Contract.

5.7 After the expiry of the Initial or Minimum Term of the applicable Customer Order for Subscription Service, save for the Subscription Service being terminated pursuant to Section 8.1(a), Customer agrees to continue to subscribe the Subscription Service and to pay the monthly or annual charges under the applicable Customer Order based on the tariff price of that Subscription Service as published or the current listed price by HGC from time to time after the Initial or Minimum Term.

## 6. Shipment

Shipment and transportation charges will be as agreed between the parties. If Customer directs HGC to bill transportation to a third-party account number or to ship 'freight collect', Customer is responsible for all transportation and accessorial charges associated with the order, and is responsible for product loss and damage in transit claims with the Customer's carrier. HGC is not liable for any Customer requirements not stated in these Sales Terms. Within two days of delivery, Customer must provide detailed notification to HGC of any visible damage. Customer will notify HGC of any claimed shortages or discrepancies within 20 days of invoice or waives its right to such claim. Title in the Products supplied by HGC to Customer will not pass to Customer and will remain the absolute property of HGC until such time as HGC has been paid by Customer all monies due and owing to it by the Purchaser in relation to any account. Title to those Products which are software remains with HGC and/or the applicable third party licensor(s) at all times.

## 7. Returns

Customer must obtain a valid return authorization number ("**RMA**") from HGC for all returns prior to returning Product. HGC has no obligation to issue RMAs. Customer is responsible for ensuring that the RMA is clearly visible on the address label of the Product packaging and for complying with all other HGC requirements



provided to Customer when the RMA is issued. HGC may refuse delivery of any package without a valid, clearly visible RMA. Credit, if any, will be provided for Product returned in accordance with HGC's return policies at the time the RMA was issued, provided Customer is not in breach of any of these Sales Terms. If Customer returns any Products without HGC's authorization or does not comply with HGC's return requirements, those Products may be subject to return to the shipping location and, if refused, HGC may consider the Products abandoned and dispose of them, without crediting Customer's account.

## **8. Term and Termination**

### **8.1 Term.**

(a) In respect of Subscription Service or a Contract for the provision of Subscription of Service, the term of Contract shall commence on the earlier of the commencement date of the Subscription Service and the start billing date of the Subscription Service (as set out in the first Customer Order with the Customer) and continue indefinitely unless terminated in accordance with the terms or conditions of the Customer Order, these Sales Terms, or the provisions contained in the AUP. The Initial or Minimum Term of each Customer Order shall be as indicated therein and each Customer Order 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 one (31) days prior to the end of any term that it has elected to terminate a Customer Order, in which case such Customer Order and the Service contained therein shall terminate at the end of the applicable term.

(b) In respect of Non-Service Products or Professional Service or a Contract for the provision of Non-Service Products or Professional Service, the term of Contract shall commence on the effective date of the Contract and shall expire or terminate in accordance with the terms or conditions of the Customer Order, these Sales Terms, or the provisions contained in the AUP (if applicable).

**8.2 Termination Upon Default.** Subject to Section 8.3, either party may terminate a Contract, a Customer Order and/or all other Customer Orders or the Agreement in the event that the other party materially defaults in performing any obligation under any of these Sales Terms or the relevant Contract 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 Customer of sums over-due by the due date, HGC has the right to immediately terminate (i) the Contract or the Agreement; or (ii) the applicable Customer Order and/or all other Customer Orders without any further obligation or liability.

**8.4 Termination Upon Insolvency.** A Contract, a Customer Order or the Agreement 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 a Contract or a Customer Order immediately if a licence(s) necessary for the provision of products/services contemplated under the Contract or the Customer Order are suspended, cancelled, revoked or terminated.

**8.6 Effect of Termination.** Upon termination of a Contract or the Agreement, all charges due under the relevant Customer Order(s)

or (where the Agreement or all Customer Orders is/are terminated) all charges due under all Customer Orders shall accelerate and become due and payable on the effective date of such termination. Termination or expiry of these Sales Terms, or all or any of the Contract(s) or Customer Order(s), or the Agreement:

(a) shall not operate as a waiver of any breach by a party of any of its/their provisions;

(b) shall be without prejudice to any rights, liabilities or obligations which a party has accrued up to the date of termination or expiry, including a right of indemnity.

**8.7** For the avoidance of doubt, the termination of a Customer Order does not terminate the Agreement, nor all other Customer Orders entered into hereunder. The termination of the Agreement terminates all Customer Orders entered into hereunder.

## **9. Suspension of Subscription Service or Professional Service**

**Suspension.** HGC has the right to suspend or restrict Customer's access to or utilization of the Subscription Service or the Professional Service immediately without notice to Customer if (i) Customer breaches any of these Sales Terms, the relevant Contract or the relevant Customer Order; (ii) Customer violates the AUP; (iii) Customer fails to pay any undisputed Charges when due; or (iv) as the result of any Excusing Event (collectively, "Service Suspension"). Any Subscription Service or the Service in question may be unavailable during a Service Suspension. Without limitation of Section 13, HGC will have no liability for any damages, liabilities, or losses resulting from any Service Suspension.

## **10. Data Protection**

**10.1** Both Customer 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.

**10.2** Customer acknowledges and agrees that personal data may be processed as a result of Products being provided.

**10.3** Customer 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 Customer's instructions from time to time.

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

## **11. Confidentiality**

**11.1** Customer 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 11 or is reasonably necessary to enable the performance of the Services or the provision of the Products by any third party. This Section 11 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 11 by its employees, agents, contractors, sub-contractors and affiliated companies.

## 12. Warranties / Indemnities

12.1 Product warranties, if any, are provided by the manufacturer or publisher (“Vendor”) of the Products. HGC EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO ANY PRODUCT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHATSOEVER. ALL INFORMATION IS PROVIDED TO CUSTOMER “AS IS.” To the extent authorized, HGC will pass through to Customer any transferable Product warranties, indemnities, and remedies provided to HGC by the Vendor, if any, including any warranties and indemnities for intellectual property infringement. Customer’s sole remedy is limited to HGC reasonably assisting Customer in its efforts to have the Vendor either: replace the Product; repair the Product; or refund Buyer’s purchase price for the Product.

12.2 HGC IS NOT RESPONSIBLE FOR AND HAS NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS CUSTOMER, ITS AFFILIATES OR ANY OTHER PARTY, FROM OR AGAINST ANY CLAIMS FOR BREACH OF SECURITY LOSS OF DATA, OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS RELATED TO THE MANUFACTURE, SALE OR USE OF THE PRODUCTS BY HGC OR ITS VENDORS. CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS HGC AND ITS VENDORS FROM AND AGAINST ANY CLAIM, DEMAND, LIABILITY, COST OR EXPENSE ARISING FROM: (A) CUSTOMER’S USE, MARKETING, DISTRIBUTION OR SALE OF PRODUCTS IN A MANNER OTHER THAN AS SPECIFIED IN PRODUCT/SERVICE DESCRIPTIONS OR SPECIFICATIONS; (B) HGC’S OR ITS VENDOR’S COMPLIANCE WITH DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS PROVIDED BY CUSTOMER; OR (C) CUSTOMER’S BREACH OF THESE SALES TERMS.

12.3 Customer warrants at the date of a Contract and the Agreement and throughout the term of the Contract and the Agreement, that:

- (a) it has the full right, power and authority to enter into and perform its obligations under the Contract and the Agreement;
- (b) it will not use the Product 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 the third party software that Customer installs and hosts on the Product (where applicable), and any other content, materials or data that Customer uses, installs, uploads or hosts on the Product (where applicable) (collectively “**Customer Content**”), and that the use by HGC of Customer Content will not infringe any intellectual property or similar rights of any third party;
- (d) everything contained in Customer Content will be accurate, complete and true and that Customer 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 Customer 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 Customer Content will not breach any law or regulation or infringe any rights of any third party;

(g) it is fully responsible for whether selected Products 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 the Contract or the applicable Customer Order;

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

(i) it is obliged to cooperate with HGC to help investigate any interruption of Service or Product, security problems, and any other violation of the Contract or the applicable Customer Order;

(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 Customer Content with the Service or Product. Moreover, it’s required to comply with the legislation that governs the applicable Customer Content on the Service or Product that are used, and will follow the AUP;

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

(m) it shall properly train its personnel in the use and application of the Service or the Product;

(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 Product;

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

(q) it will not access or use any Product 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 Product; and

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

12.4 Customer 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 Customer of any of its obligations, representations or warranties under these Sales Terms or the AUP;
- (b) the provision of the Product to Customer except to the extent of loss arising directly from HGC’s intentional default or gross negligence; and/or



(c) Customer Content, including any third party claiming any interest in Customer 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. Limitation of Liability

13.1 HGC will have no liability for failure to allocate or reserve any Product for Customer or for failure to deliver Products within a specified time period. CUSTOMER AGREES THAT HGC'S LIABILITY FOR DAMAGES ARISING UNDER THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL BE LIMITED TO ACTUAL, PROVEN, DIRECT DAMAGES AND WILL NOT EXCEED (I) THE NET AMOUNT PAID TO HGC BY CUSTOMER FOR THAT PRODUCT OR SERVICE WHICH IS THE SUBJECT OF THE CLAIM; OR (II) (IN RESPECT OF SUBSCRIPTION SERVICE) THE NET AMOUNT PAID TO HGC BY CUSTOMER DURING THE SIX MONTHS' PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY, WHICHEVER AMOUNT SHALL BE THE LOWER. EXCEPT FOR INDEMNITY OBLIGATIONS AND BREACHES OF CONFIDENTIALITY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, LOSS OF DATA OR SECURITY BREACH OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH THE SALES TERMS, OR ANY PRODUCTS OR INFORMATION, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF THOSE DAMAGES. THE PARTIES EXPRESSLY WAIVE ALL CLAIMS FOR THOSE DAMAGES.

13.2 Subject to Section 13.6 below:

(a) HGC shall not be liable to Customer in the event that HGC is unable to perform an obligation or provide the Services or Products to Customer 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 or Products, interruption of Services or Products or HGC's refusal to provide Services or Products pursuant to the provisions of this Agreement.

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

- (i) Customer's or third party services, hardware, or software;
- (ii) any of the information provided by Customer 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) Customer's failure to adhere to any required configurations, use supported platforms, or follow the AUP;

(iv) Customer's failure to adopt HGC's guidelines or advice to a proper use / modification of a Service, such as incorrect software configuration;

(v) Customer's or User's unauthorised action or inaction inclusive of Customer, Customer's employees, agents, contractors, vendors, or anyone gaining access to HGC's Service by means of Customer's passwords or equivalent;

(vi) any failure of Services or Products caused by Customer or User;

(vii) any unpaid or suspended Service or Product;

(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 Customer or any Person arising out of or in connection with this Agreement or any Services or Products 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 Customer 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.

13.3 Any claim by Customer 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 Customer will be deemed to have waived Customer's rights in respect of such claim.

13.4 Nothing under this Section 13 shall limit or exclude HGC's liability which is not permitted to be limited or excluded under Hong Kong law.

13.5 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 13 as if such provisions were expressly for their benefit. To the extent of this Section 13, 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.

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

(a) with respect to all other liabilities:

(i) the total amount as set forth in Section 13.1 above; or

(ii) in the case of services, the supply of the services again.



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

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

#### **14. Compliance**

HGC and Customer agree to abide by all laws and regulations applicable to the performance of their respective obligations under these Sales Terms. Neither party has made, and will not make, any direct or indirect payment, offer to pay, or authorization to pay, any money, gift, promise to give, or authorization of the giving, of anything of value to any government official, or the immediate family of any such official, for the purpose of influencing an act or decision of the government or such individual in order to assist, directly or indirectly, Customer or HGC in obtaining or retaining business, or securing an improper advantage.

#### **15. Restrictions**

Customer may not alter or modify the Products in any way or combine the Products with any other product or material not authorized by HGC and the applicable Product Vendor. All Products delivered to Customer may have additional restrictions on their distribution or use. Customer is solely responsible for ensuring its adherence to any and all such restrictions. Unless otherwise agreed by HGC in writing, Customer may not export the Products outside the territories permitted by the applicable Products. For the avoidance of doubt, unless otherwise communicated in writing, the only permitted territory is Hong Kong.

#### **16. Relationship**

Customer and HGC are independent contractors. Nothing stated in these Sales Terms will be construed as creating the relationship of employer/employee, franchisor/franchisee, partners or principal/agent between the parties. Neither party will make any warranty, guarantee or representation, whether written or oral, on the other party's behalf.

#### **17. Governing Law**

These Sales Terms (and any agreement into which they are incorporated) will be construed, interpreted and enforced exclusively under and in accordance with the laws of the Hong Kong, excluding its conflicts of law rules. The parties agree to and submit to exclusive jurisdiction of courts of Hong Kong. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Sales Terms.

#### **18. Notices**

All notices, requests, demands, and other communications must be in writing and may be given by (i) personal delivery, (ii) registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of the party, at its official corporate address.

#### **19. Publicity**

Except for any announcement intended solely for internal distribution by either party or any disclosure required by legal, accounting, or regulatory requirements, all media releases, public announcements, or public disclosures by either party or its employees or agents relating to these Sales Terms, the

relationship between HGC and Customer, or including the marks of the other party or any affiliate of that party, must be approved in writing by the other party prior to release.

#### **20. Assignment**

Customer may not assign or delegate its rights or duties under these Sales Terms, by operation of law or otherwise, in whole or in part, without the prior written consent of HGC. Any change of control of Customer will be deemed an assignment. Any attempted assignment without that consent will be null and void without any force or effect.

#### **21. Validity**

If any provision of these Sales Terms is held to be unenforceable, the enforceability of the remaining provisions will not in any way be affected. Failure or delay of either party to exercise a right under these Sales Terms will not operate as a waiver, nor will any single or partial exercise of a right preclude any other future exercise of that right. The parties agree to use electronic signatures and that their respective electronic signatures will be legally enforceable.

#### **22. Survival**

No termination of these Sales Terms, or all or any of the Contract(s) or Customer Order(s), or the Agreement will affect any rights or obligations of either party: (i) which are vested pursuant to these Sales Terms, the Contract(s) or Customer Order(s) or the Agreement as of the effective date of such termination; or (ii) which, by their sense and context are intended to survive completion of performance or termination of these Sales Terms, including, without limitation, Confidentiality, Warranties / Indemnities, and Limitation of Liability, all of which will survive.

#### **23. Entire Agreement; Amendment**

These Sales Terms are intended to be the sole and complete statement of the obligations and rights of the parties as to all matters covered hereunder, and supersede all conflicting terms and conditions set out in purchase orders or other documents submitted by Customer as well as previous understandings, agreements, negotiations and proposals relating thereto. HGC may at any time modify the terms and conditions of these Sales Terms, or any part thereof, or may impose new conditions to purchase or ordering of the Product. Except as otherwise stated in the Customer Order or Contract, any modification to these Sales Terms shall be effective immediately after it initially is posted on the Site or HGC Website. Purchase or ordering of the Product after any such modification will be conclusively deemed acceptance of such modification.

#### **24. Related Party Transaction**

For purposes of your agreement with HGC, a conflict of interest occurs if:

- (a) any of your employees, board of directors or shareholder is an HGC associate;
- (b) any of your employees, board of directors or shareholder is an immediate family member of an HGC associate;
- (c) any of your employees, board of directors or shareholder is related in any way to an HGC associate;
- (d) the Company or its affiliate is currently the employer, partner or agent of an HGC associate;



(e) the Company or its affiliate is currently the employer, partner or agent of an entity owned or controlled by an HGC associate;

(f) the Company or its management, director or shareholder has or had an agreement, arrangement or understanding with an HGC associate in his/her personal capacity outside the ordinary course of the Company's business, or

(g) the Company or its management, director or shareholder has or had an agreement, arrangement or understanding with an entity owned or controlled by an HGC associate outside the ordinary course of the Company's business.

The Company hereby declares that it is not aware of any actual or potential conflict of interest and undertakes to promptly disclose in writing to HGC any actual or potential conflict of interest as soon as it is aware of the same.

## **25. Governing Language**

These Sales Terms are 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.

## **26. Compliance**

26.1 Sanction. Customer further represents and warrants that it is not now, has never been and will not be listed or named as, nor has it ever acted directly or indirectly for or on behalf of any person, group or entity or nation named in any Executive Order or by the United States Treasury Department or any other state or federal agency as a terrorist, or a "Special Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control ("OFAC") or any other governmental agency.

26.2 Anti-bribery. Customer agrees to comply with the United States Foreign Corrupt Practices Act and any other applicable anti-bribery or anti-corruption laws. Customer represents and warrants that neither Customer, nor any Customer affiliate, director, officer, agent, employee, or other person acting for or on behalf of the foregoing (individually and collectively for purposes of this provision, a "Customer Affiliate") have violated the United States Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption laws, nor has any Customer Affiliate offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Government Entity, as defined below, to any political party or official thereof or to any candidate for political office (individually and collectively, a "Government Official") or to any person under circumstances where such Customer Affiliate knew or was aware of a high probability that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of: (1) influencing any act or decision of such Government Official in his official capacity, (2) inducing such Government Official to do or omit to do any act in violation of his lawful duty, (3) securing any improper advantage, (4) inducing such Government Official to influence or affect any act or decision of any Government Entity, or (5) assisting Customer or its subsidiary in obtaining or retaining business for or with, or directing business to, Customer or its subsidiary. "Government Entity" as used in the previous paragraph means any government or any department, agency or instrumentality thereof, including any entity or enterprise owned or controlled by a government, or a public international organization.

26.3 Any breach of this clause is considered to be a material breach of these Sales Terms incapable of remedy on part of the Customer. Reference to:

- "HGC associate" means an employee of HGC.
- "Immediate family member" means a spouse, children and children-in-law, siblings and siblings-in-law and parents and parents-in-law.
- "You", "your" or "the Company" means the entity submitting the application form.