

HGC GlobalCentre Limited
Service Terms and Conditions

The client ("**Client**") as specified in the service order form ("**Service Order**") placed with HGC GlobalCentre Limited ("**HGCGC**"), shall observe and be bound by the following service terms and conditions in relation to the provision of the Services (as defined in clause 2.1) by HGCGC:

1. AGREEMENT

Unless otherwise stated, any reference to "**this Agreement**" in these service terms and conditions shall include the terms and conditions as contained herein and the service order as placed by the Client to HGCGC requesting for provision of the Services. Should there be any conflict between these service terms and conditions and the Service Order, the latter shall prevail.

2. SERVICES

2.1 Pursuant to this Agreement, HGCGC shall sell and provide to the Client, in consideration for the applicable fees as set forth in the Service Order the following: (i) the equipment intended to be purchased by the Client relating to the Services ("**Hardware**") and the installation of the Hardware; (ii) a licence of space ("**Space**") to store and operate the Hardware together with any equipment owned and delivered by the Client (together with the Hardware, "**Client Equipment**"); (iii) the management, planning and consulting resources to support the Services, including the maintenance and operation of the Client Equipment ("**Professional Services**"); (iv) the licensing of software to provide the Services ("**Software**"), including, without limitation, monitoring software, billing software, trouble ticketing software, data collection and process control software; and (v) any additional service offerings that HGCGC may, from time to time, introduce, which together, including all telecommunication and digital transmission connections and links, all electrical and physical requirements under this Agreement (collectively, "**Services**", and each, individually, "**Service**").

2.2 The Services will be provided in accordance with the specifications set forth in the Service Order.

3. SERVICE ORDER

3.1 The Service Order will set forth the Services to be provided by HGCGC, the specifications applicable to the Service, the prices and payment schedule, the initial term of the Services and other information the parties may mutually agree upon. The Service Order will not be effective until accepted by HGCGC.

3.2 In the event that (i) the Client terminates this Agreement other than pursuant to clause 10 or (ii) HGCGC terminates this Agreement pursuant to clause 10, the Client shall pay to HGCGC all monthly charges specified in the Service Order for the balance of the term therefor, which shall accelerate and become due and payable on the effective date of such termination.

3.3 **Internet Resources and IP Addresses.** HGCGC will assign to the Client, on a temporary basis, a reasonable number of Internet Protocol Addresses ("**IP Addresses**") from the address space assigned to HGCGC by Asia Pacific Network Information Centre ("**APNIC**"). The Client acknowledges that such IP

Addresses are the sole property of HGCGC and are assigned to the Client as part of, and in connection with, the Services, and are not “**portable**”, as such term is used by APNIC. HGCGC has the right to change IP Addresses at any time, however, HGCGC will use reasonable efforts to avoid any disruption to the Client resulting from such renumbering requirement. HGCGC will give the Client reasonable notice of any such renumbering. The Client acknowledges and agrees that it will have no right to IP Addresses upon termination of this Agreement and that any renumbering required by the Client after termination will be the sole responsibility of the Client.

- 3.4 **Data Flow.** The Client acknowledges that HGCGC cannot control the flow of data from or to HGCGC’s network and the internet connection. HGCGC shall not be liable for any damage or interruption to the Client arising from the internet connection in the course of provision of the Services. If HGCGC has any reasonable grounds to believe that the Client’s use of the internet connection at the Space or otherwise interferes or causes harm to the HGCGC network or other clients of HGCGC, HGCGC is entitled to suspend the Services immediately.
- 3.5 **Staffing.** HGCGC is solely responsible for staffing decisions with respect to its personnel and the provision of any Services and has the right to remove or replace any of its personnel assigned to perform Services.

4. SOFTWARE LICENCE AND RIGHTS

- 4.1 **Licence.** During the term of this Agreement, HGCGC will grant to the Client a non-transferable and nonexclusive licence to use the Software in object code form only, solely on the Client Equipment or HGCGC’s equipment used in conjunction with the Services.
- 4.2 **Proprietary Rights.** This Agreement transfers to the 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 clause 4.1. The Client must:
 - 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; and
 - 4.2.3 not export or re-export the Software without the written consent of HGCGC, its Software licensor and the appropriate government authorities.
- 4.3 **Licence Restrictions.** The Client agrees that it will not, nor through its parent, subsidiaries, affiliates, agents, or other third parties:
 - 4.3.1 copy the Software except as expressly allowed under this Agreement. In the event the Client makes any such permitted copies of the Software, the Client must reproduce all proprietary notices of HGCGC 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 clause 12); or
- 4.3.5 use the Software to provide processing services to third parties, or otherwise use the Software on a 'service bureau' basis.

Additional restrictions may apply to certain files, programs or data supplied by third parties or embedded in Software which are set out instructions or release notes and are incorporated herein by reference.

- 4.4 **Further Assurances.** Client must at all times keep HGCGC informed of any known non-compliance or threatened non-compliance with this clause 4 and must provide HGCGC or its Software licensor with all reasonably necessary assistance in enforcing these provisions.
- 4.5 **Injunctive Relief.** The Client acknowledges that HGCGC or any third party Software licensors has 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 **Audit.** HGCGC may audit (or allow its Software licensor to audit) the use of the Software by the Client. Any such audit will be conducted during regular business hours in the Client's Space and will not unreasonably interfere with the Client's business activities. Where Charges (as defined in clause 8.1.1) associated with the use of the Software are charged according to the level of usage, if an audit reveals that the Client has understated the use by more than 5%, the Client shall be invoiced for the understated capacity and shall bear the cost of the audit. Otherwise HGCGC shall bear the cost of the audit.
- 4.7 **The Client's Right to Use Software.** The Client's right to use the Software will terminate upon expiration or termination of this Agreement. The Client must (i) de-install the Software from any Client Equipment upon which it has been installed and (ii) destroy the media and all documentation associated with the Software promptly. Upon the written request of HGCGC, the Client must certify in writing to HGCGC (or its Software licensor if HGCGC so directs) that the Software has been de-installed and the media and all documentation have been destroyed. Expiration or termination of this Agreement will not release the Client from the obligations of this clause.
- 4.8 **Trial of Product.** From time to time, the Client may be provided with copies of Software for trial use. For such Software ("**Trial Software**"), this licence consists of a non-exclusive evaluation licence ("**Trial Licence**") to use the Trial Software for a limited time ("**Trial Period**") only for evaluation. During the Trial Period, the Client may not use the Trial Software for development, commercial, production, database management or other non-trial purposes. The Client accepts the Trial Software on an "AS IS" basis and agrees that HGCGC (or its Software licensor) grant no warranties or conditions (including implied

warranties or merchantability and fitness for a particular purpose) to the Client and accepts no liability whatsoever resulting from the use of such Trial Software under the Trial Licence. Notwithstanding the foregoing, clauses 4.2 to 4.5 apply to the Trial Licence. Either party upon giving written notice to the other may cancel the Trial Licence. Upon termination or expiration of the Trial Period, the Client must either execute a service order relating to the use of the Trial Software or return to HGCGC the Trial Software in accordance with the terms of clause 4.

5. HARDWARE TERMS AND CONDITIONS

- 5.1 **Installation.** If so indicated on the Service Order, HGCGC will use commercially reasonable efforts to install the Hardware at the Space after HGCGC receives the Hardware at the Space, and will work with the Client on an installation plan to define installation time frame and requirements.
- 5.2 **Purchase and Title of Hardware.** If the Service Order includes or results in any purchase of the Hardware by the Client from HGCGC, risk of loss or damage to the Hardware will pass to the Client upon the delivery of the Hardware to the Space. Title to the Hardware will pass to the Client upon receipt of full payment by HGCGC.

6. SPACE

- 6.1 **Licence to Occupy.** HGCGC grants to the Client a non-exclusive licence to occupy the Space. The Client acknowledges that it has been granted only a licence to occupy the Space and that it has not been granted any real property interest in the Space.
- 6.2 **Material and Changes.** The Client must not make any construction changes or material alterations to the interior or exterior portions of the Space including, without limitation, any material alteration to cabling or power supplies, without obtaining HGCGC's prior written approval. If any construction changes or material alterations as aforesaid are so required by the Client, the Client may request HGCGC to carry out the same, provided however that HGCGC reserves the right to perform and manage any construction or alterations within the Space at rates to be negotiated between the Client and HGCGC. The Client must not erect any signs or devices to the exterior portion (or visible on the exterior portion) of the Space without obtaining HGCGC's prior written approval.
- 6.3 Unless otherwise agreed, the Client is responsible for the installation and removal of the Client Equipment, including related packing materials. The Client Equipment to be installed in the Space is subject to HGCGC's prior authorisation. The Client must ensure that the Client Equipment is in good working condition and that it does not cause any power surge or any electromagnetic or mechanical interference in the Space.
- 6.4 The Client must ensure that the maximum power consumption of the Client Equipment at any time does not exceed the subscribed power capacity as specified in the Service Order. The Client shall reimburse HGCGC for any charges incurred by HGCGC for extra usage of the power capacity of the Client Equipment.

- 6.5 Without prejudice to clause 6.4, where the maximum power consumption of the Client Equipment exceeds the subscribed power capacity, the Client must subscribe for the additional power capacity as authorised by HGCGC, or otherwise, reduce the power consumption of the Client Equipment in order to avoid any circuit tripping and interruption to the Services. HGCGC will not in any event be liable for any damage or interruption to the Services due to any unauthorised extra power usage of the Client Equipment.
- 6.6 **Damage.** The Client must reimburse HGCGC for all reasonable repair or restoration costs associated with damage or destruction in the Space or the premises where the Space is located caused by the negligence or willful misconduct of the Client or the Client's personnel, the Client's agents, the Client's suppliers/contractors, or the Client's visitors to the Space or as a consequence of the Client's installation or removal of the Client Equipment or other property installed in the Space.
- 6.7 **Insurance.**
- 6.7.1 In respect of the Client Equipment listed in the Service Order, the Client agrees to effect and maintain throughout the continuance of this Agreement, at its expense, a policy of public liability insurance in an amount not less than HK\$5,000,000 per occurrence and HK\$20,000,000 for all occurrences in aggregate for each insurance year for bodily injury (including death) or property damage claimed by third parties. The above insurance must be made with a creditworthy insurer acceptable to HGCGC. The Client must, upon HGCGC's request, promptly provide documents to the satisfaction of HGCGC evidencing the existence and continuance of such insurance.
- 6.7.2 The Client acknowledges and agrees that it is solely responsible for effecting and maintaining property all risks insurance in respect of all the Client Equipment situated at the Space.
- 6.8 **Regulations.** The Client must comply with HGCGC's Safety, Health and Operation Rules and other regulations from time to time in effect relating to access to the premises and facilities where the Space is located and use of the Space ("**Rules**"). The Client's failure to comply with the Rules will constitute a material default under this Agreement. HGCGC may, in its sole discretion, limit the Client's access to a reasonable number of authorised employees or designees of the Client. The Client must not interfere with the equipment belonging to other clients of HGCGC located in the Space or such other clients' use of the Space.
- 6.9 **Relocation.** Where HGCGC in its absolute discretion deems it necessary to relocate the Client Equipment to another space within the applicable facility, the Client will cooperate with HGCGC in connection with such relocation and will use all reasonable efforts, in cooperation with HGCGC, to minimise any interruption to the Services.
- 6.10 **Cross Connects**
Any connection of the Client Equipment to any other equipment situated or placed within the Space is subject to the prior written approval from HGCGC. The Client shall apply and pay to HGCGC on the setup of any cross connects cabling (if so required).

- 6.11 **Disclaimer.** Except as expressly stated herein, HGCGC does not make any representation or warranty as to the fitness of the Space for the placement of the Client Equipment or otherwise for the Client's use.

7. **USE**

User Content. The Client is solely responsible for the content of any postings, data, or transmissions using the Services ("**Content**") and any other use of the Services by the Client or by any person or entity the Client permits to access the Services ("**User**"). The Client agrees that it and any User will not use the Services (i) for unlawful purposes including, without limitation, infringement of copyright or trademark, misappropriation of trade secrets, wire fraud, invasion of privacy, pornography, obscenity and defamation or (ii) to interfere with or disrupt other network users, network services or network equipment. Disruptions include, without limitation, distribution of unsolicited advertising or chain letters, repeated harassment of other network users, wrongly impersonating another such user, falsifying one's network identity for improper or illegal purposes, sending unsolicited mass e-mailings, propagation of computer worms and viruses, and using the network to make unauthorised entry to any other machine accessible via the network. If HGCGC has reasonable grounds to believe that the Client or a User is utilizing the Services for any such improper purpose, HGCGC may suspend or terminate the Services immediately upon notice to the Client. The Client shall defend, indemnify, hold harmless HGCGC from and against all liabilities and costs (including reasonable attorney's fees) arising from any and all claims by any person arising out of the Client's use of the Services, including without limitation any of the Content.

8. **PRICING AND PAYMENT TERMS**

- 8.1 **Payment Terms.** The Client shall pay HGCGC for the Services on the following basis:

8.1.1 The Client shall pay:

- (a) The charges specified as payable in the Service Order in respect of the Services ("**Charges**"); and
- (b) The full amount of any invoice submitted to the 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) by the due date without set-off or deduction.

8.1.2 Unless otherwise indicated on the Service Order, payment is due within 30 days of the date of HGCGC's invoice. If payment is not made by the due date, HGCGC may charge interest on a daily basis on all sums outstanding at the rate of 2% per month from the due date of payment to the date when full payment is received by HGCGC, and charge the Client a collection fee and handling fee.

8.1.3 If any Charges stated in any invoice are not queried within 15 days of the date of the invoice then such Charges will be deemed accepted by the Client.

- 8.1.4 Unless otherwise agreed, HGCGC will invoice the Client: (i) monthly in advance for subscription to (and monthly charges for) the Services and (ii) monthly in arrears for usage charges; but HGCGC may at its sole discretion amend the invoicing period and submit interim invoices to the Client. The Client shall be liable for such subscription and monthly charges for the Services whether used by the Client or not. Pre-paid Charges are non-refundable.
- 8.1.5 A Service Order may specify a deposit amount, or HGCGC may demand a deposit from the Client where the Client fails to pay invoices by the due date for two consecutive months equal to three months Charges, to secure payment of any sum due to HGCGC. HGCGC may apply such deposit to pay any sum due by the Client to HGCGC on whatsoever account at any time. No interest shall accrue on any deposit held by HGCGC. Any deposit remaining following this Agreement's expiration or termination shall be returned to the Client after deducting any such sums due to HGCGC within 60 days following expiration or termination of this Agreement.
- 8.1.6 HGCGC may apply a credit limit for Charges incurred by the Client where the Client fails to pay invoices by the due date for two consecutive months and may suspend the Client's access to the Services, in whole or in part, if such limit is exceeded.
- 8.1.7 HGCGC may transfer or apply any credit balance in the Client's favour to settle any amount owed by the Client to HGCGC.
- 8.1.8 The Client acknowledges that HGCGC's appointed agent may invoice the Client on HGCGC's behalf and such invoice shall be valid as if rendered by HGCGC. Such invoice does not prejudice any rights of HGCGC to subsequently claim against the Client provided that such invoice remains unpaid.
- 8.1.9 Should HGCGC invoice the Client in respect of any content or equipment as agent for a third party content or third party equipment provider, HGCGC will not be responsible for such content or equipment.
- 8.1.10 In case of disputes over any usage or other Charges, HGCGC's decision based on its usage records and those of any third party who may assist HGCGC to provide the Services shall be final and binding on the Client.
- 8.2 HGCGC may retain the Client Equipment or other assets of the Client in HGCGC's possession as security for payment and due compliance with any other obligations under this Agreement and sell them in satisfaction of any unpaid sums or other compensation awarded to HGCGC with respect to any default under this Agreement. HGCGC may at its sole and absolute discretion appoint any law firm, contractual credit management organization or collection agency for debt recovery in respect of any unsettled bills of the Client.

9. MAINTENANCE AND SUPPORT

- 9.1 **Support.** HGCGC will provide the Client with maintenance and support of any Software and Hardware ("**Maintenance and Support**") as agreed in the Service Order.
- 9.2 **Exclusions.** Maintenance and Support does not include services for problems arising out of (i) modification, alteration or addition or attempted modification, alteration or addition of the Hardware or Software undertaken by persons other than HGCGC or HGCGC's authorised representatives or (ii) programs or hardware supplied by the Client.
- 9.3 **The Client Duties.** The Client must (i) document and promptly report all errors or malfunctions of the Hardware or Software to HGCGC, (ii) 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 HGCGC, (iii) maintain a current backup copy of all programs and data, and (iv) properly train its personnel in the use and application of the Hardware and Software.

10. TERM AND TERMINATION

- 10.1 **Term.** This Agreement becomes effective once the Service Order has been accepted by HGCGC and the term will be for the period as set out in the relevant Service Order commencing from the provision of the Services, unless and until terminated in accordance with the terms of this Agreement ("**Initial Term**"). Upon expiry of the Initial Term, this Agreement will automatically renew for successive three month periods ("**Extended Term**") on same terms and conditions, subject to the right of either party to terminate this Agreement by notifying the other party in writing of such intention at least 30 days prior to the expiry of the Initial Term or the Extended Term.
- 10.2 **Termination Upon Default.** Subject to clause 10.3, either party may terminate this Agreement 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 90 days following written notice of default.
- 10.3 **Termination Upon Non-Payment.** In the event of non-payment by the Client of sums over-due hereunder for more than 45 days, HGCGC has the right to immediately terminate this Agreement without incurring any further obligation or liability.
- 10.4 **Termination Upon Insolvency.** This Agreement will terminate, effective upon delivery of written notice by a party (i) upon the institution of insolvency, receivership or bankruptcy proceedings of the other party, (ii) upon the making of an assignment for the benefit of creditors by the other party, or (iii) upon the dissolution of the other party.
- 10.5 **Effect of Termination.** Provisions intended to survive termination of this agreement will not be invalidated by the 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.

- 10.6 Upon expiration or termination of this Agreement, the Client must within seven days remove the Client Equipment and inform HGCGC the date on which the Client Equipment will be removed ("**Removal Date**").
- 10.7 If the Client fails to remove the Client Equipment on or before the Removal Date, then HGCGC may, at the cost of the Client, remove the Client Equipment, and dispose of such equipment (irrespective of whether any data is stored therein) as HGCGC sees fit, and HGCGC shall return the proceeds (if any) of such disposal to the Client after deduction of any payment outstanding from the Client and any costs incurred by HGCGC in relation to such disposal. HGCGC will not be liable for any loss, damage, costs and other expenses of any nature whatsoever incurred or suffered by the Client whether direct or consequential arising out of or in relation to the aforesaid disposal of the Client Equipment.

11. PERSONAL DATA

11.1 Where any personal data as defined under the Personal Data (Privacy) Ordinance (Cap. 486, Laws of Hong Kong) ("**Personal Data**") is disclosed to HGCGC in the performance of its obligations under this Agreement, the Client acknowledges and agrees that such Personal Data may be used, transferred (whether in Hong Kong or abroad) and retained by HGCGC for the following purposes and for any other purposes as may be agreed between the Client and HGCGC or required by law from time to time:

- (a) provisioning of the Services;
- (b) offering or provisioning of goods or services by HGCGC or its affiliated companies in relation to the Services;
- (c) marketing research and other marketing purposes of HGCGC, its agents, or its affiliated companies in relation to the Services or otherwise, provided separate consent authorising such use of the Personal Data is obtained from the relevant data subjects;
- (d) processing of any benefits arising out of or in connection with the Services;
- (e) analyzing, verifying and checking the Client's credit, payment and status in relation to provision of the Services;
- (f) processing of any payment instructions, direct debit facilities and credit facilities requested by the Client;
- (g) enabling the daily operation of the Client's account and the collection of amounts outstanding in such account in relation to the Services;
- (h) enabling HGCGC or its affiliated companies to comply with any industry practices;
- (i) disclosures required by law; and
- (j) enforcement of this Agreement.

11.2 The Client further agrees that HGCGC may disclose and transfer such Personal Data (whether in Hong Kong or abroad) to HGCGC's agents, affiliated companies, telecommunications companies, contractors, debt collection

agencies, credit reference agencies, credit providers, security agencies, financial institutions, and any other persons under a duty of confidentiality to HGCGC or any of its affiliated companies, and any of HGCGC's actual or proposed assignees or transferees of HGCGC's rights with respect to the Client to use, disclose, hold, process, retain, or transfer such Personal Data for the purposes specified in clause 11.1.

- 11.3 Where any Personal Data, is disclosed to HGCGC in the performance of its obligations under this Agreement, the Client undertakes and agrees that it has procured all third party consents (if necessary) from time to time for HGCGC to use or disclose such Personal Data for the purposes specified in clauses 11.1 and 11.2.

12. CONFIDENTIALITY

Unless otherwise required by laws or any regulatory body, the Client agrees that during the continuance of this Agreement and thereafter, it will keep confidential and will not use for its own purposes, or without the prior written consent of HGCGC disclose to any third party, any information concerning the terms of this Agreement or the business of the other party which may become known as a result of the performance of this Agreement ("**Confidential Information**") unless such information is in the public domain other than as a result of a breach of this clause. The Client must take all reasonable steps to ensure compliance with the provisions of this clause by its employees, agents, contractors, sub-contractors, and affiliated companies.

13. LIMITATION OF LIABILITIES

- 13.1 Subject to clause 13.3 below:

- (a) HGCGC will not be liable to the Client in the event that HGCGC is unable to perform an obligation or provide the Services to the Client because of any force majeure event (which includes, without limitation, acts of God, industrial action, default or failure of a third party, governmental action;
- (b) all conditions, warranties and representations implied by law in relation to the provision of the Services by HGCGC are excluded unless otherwise specified in this Agreement, and without limitation to the foregoing, HGCGC will not be liable to the Client for any failure, delay, malfunction or non-performance of the Services;
- (c) in no event will HGCGC be liable to the other party under or in connection with this Agreement or otherwise for any corruption, destruction or loss of data, loss of goodwill, loss of anticipated savings, loss of contracts, loss of revenue, financial loss or loss of business profits, or anticipated savings, or for any indirect, special, consequential loss whether foreseeable or not or howsoever caused, whether arising in tort, from its negligence, its breach of contract, or its breach of statutory duty, under any indemnity or howsoever caused; and
- (d) without limiting the foregoing, HGCGC will not be under any liability whatsoever (whether in tort, contract, or otherwise) to the 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 messages or any destruction of messages.

- 13.2 Any claim by the Client against HGCGC arising out of this Agreement must be notified in writing to HGCGC within one year of the incident giving rise to such claim, failing which the Client will be deemed to have waived the Client's rights in respect of such claim.
- 13.3 Nothing under this clause shall limit or exclude HGCGC's liability which is not permitted to be limited or excluded under Hong Kong law.
- 13.4 HGCGC's employees, agents, and sub-contractors shall have the benefit of the rights, exclusions and limitations of the provisions in this clause 13 as if such provisions were expressly for their benefit. To the extent of this clause 13, HGCGC is entering into this Agreement not only on its own behalf, but also as agent and trustee for such employees, agents, and sub-contractors.
- 13.5 Notwithstanding anything else in this Agreement, HGCGC's liability for all claims arising out of this Agreement shall be limited to:
 - (a) with respect to any liability which is insured pursuant to clause 6.7 of this Agreement, whether in relation to any one incident or series of incidents arising from a common cause, the amount paid out by the insurer; and
 - (b) with respect to all other liabilities, the total amount of Charges paid by the Client under the applicable Service Order to HGCGC with respect to that Service in the 12 months previous to the event giving rise to the liability.

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

14. CUSTOMER WARRANTIES AND INDEMNITIES

- 14.1 The Client warrants 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 HGCGC where appropriate) in respect of any intellectual property rights contained in each and every part of the Content, and that the use by HGCGC of the Content will not infringe any intellectual property or similar rights of any third party;
 - (d) everything contained in the Content will be accurate, complete and true and that the Content will not be illegal or unlawful and will not breach any law or code affecting advertising;
 - (e) nothing contained within the 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.

- 14.2 The Client shall indemnify and keep HGCGC and its agents, contractors, sub-contractors, 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 the client basis) suffered or incurred by HGCGC or its agents, contractors, sub-contractors, and affiliated companies in any way arising from:
- (a) the provision of the Services to the Client except to the extent of loss arising directly from HGCGC's breach of this Agreement or gross negligence; and
 - (b) the Content, including any third party claiming any interest in the Client Content, any claims arising from any act alleged to be illegal, claims for defamation, infringement of intellectual property rights, damage to computer database, loss of data or distribution of obscene or offensive material.

15. MISCELLANEOUS

- 15.1 **No Agency.** Nothing contained in this Agreement is to be construed as constituting or evidencing any partnership, agency or contract of employment between the parties.
- 15.2 **Notices.** Any notice or other communication to be given under this Agreement must be in writing and must be served by leaving it or sending it by facsimile or prepaid post to the addresses of the parties specified in the Service Order or as are notified by either party to the other from time to time. Any notice or communication given under this Agreement will be deemed to be served/received by the other party within 48 hours of posting or immediately upon faxing if the transmission report indicates that the fax transmission was successful.
- 15.3 **Assignment.** Neither party may assign its rights or obligations under this Agreement without the other party's prior written consent.
- 15.4 **Governing Law.** This Agreement is subject to the laws of Hong Kong Special Administrative Region of The People's Republic of China ("**Hong Kong**") and the parties submit to the non-exclusive jurisdiction of the courts of Hong Kong.
- 15.5 **Entire Agreement.** This Agreement is the complete and exclusive statement of the agreement between the Client and HGCGC, and supersedes all understandings or prior agreements, whether oral or written, and all representations or other communications between the Client and HGCGC. Any variations or additions to this Agreement are only valid if confirmed in writing by an officer authorised by HGCGC.
- 15.6 **Waiver.** 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 will not constitute 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.
- 15.7 **Severance.** If any term or condition of this Agreement is held to be prohibited or unenforceable, all other terms and conditions will remain in full force and effect.

- 15.8 **Rights.** All rights granted to a party are cumulative and not exhaustive of any rights and remedies provided by law, and no exercise or partial exercise by a party of any right under this Agreement will 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.
- 15.9 **Non-Solicitation.** During the term of this Agreement and for a period of one year thereafter, the Client must not directly solicit, nor directly attempt to solicit, the services of any employee or sub-contractor of HGCGC, without the prior written consent of HGCGC.
- 15.10 **Substitution.** HGCGC, may substitute, change or modify the Software or HGCGC's equipment 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 Software or HGCGC's equipment, HGCGC may at its option remove such Software or equipment and, in such event, the remaining payment obligations with respect to the Client's use of such Software or equipment shall be terminated.