



Special Terms and Conditions for HGC Business eMail Services

1. Description

- a. The “Services” are the HGC Business eMail Services, which is more particularly defined in the Order Form. The Services are provided pursuant to the terms and conditions of an Agreement.
- b. These Special Terms and Conditions for HGC Business eMail Services are supplemental to HGC’s General Terms and Conditions (including the Special Terms and Conditions for Fixed Network Services) for the purpose of any HGC Business eMail Services. Unless otherwise stated, all expressions and terms used herein shall have the same meaning as defined in HGC’s General Terms and Conditions.

2. Definitions

“**Agreement**” means, in relation to the Services ordered under each Order Form accepted by HGC, that Order Form together with these Special Terms and Conditions for HGC Business eMail Services, HGC’s General Terms and Conditions, HGC’s Special Terms and Conditions for Fixed Network Services and other Special Terms and Conditions referred to in the Order Form.

“**Authorized End User**” means any person nominated and authorized by a Customer to set up, configure, manage and use the Services ordered by the Customer.

“**Configuration Information**” means the information provided by HGC to Customer for the sole purpose of configuring the Customer Equipment and Software in order to obtain access to the Services, including but not limited to, the IP address and information regarding HGC’s DNS server, subnet mask and default gateway etc.

“**Customer**” means the customer specified in an Order Form, who orders the Services, and to whom the Services are to be provided under the relevant Agreement by HGC.

“**Customer Equipment**” means the computer equipment and internet access to be provided by Customer itself at its own costs which is necessary for its Authorized End Users to access and use the Services.

“**Customer Software**” means Software (if any) from time to time supplied by Microsoft, through HGC or otherwise, to the Customer for the purpose of using the Services under the terms of the relevant Agreement.

“**Equipment**” means the computer equipment, network switching and/or routing equipment, software, and/or related equipment used by HGC from time to time for the purpose of providing the Service.



“**HGC**” means HGC Global Communications Limited.

“**Messages**” means any communication transmitted through the Services from time to time, including any contents, attachments, documents, information, diagram, symbol or other materials in whatever languages or forms (including textual, audio, video, still and moving images, graphical, musical or other contents or information or goods or services) therein.

“**Microsoft**” means [Microsoft Corporation].

“**Minimum Commitment Period**” means unless otherwise agreed by HGC, twelve (12) months from the Service Provision Date.

“**Order Form**” means the standard form prescribed by HGC for the Customer to fill in to order the Services.

“**Service**” means Business eMail Services, which are more particularly defined in the Order Form, to be provided by HGC to Customer and Customer’s Authorized End Users pursuant to an Agreement.

“**Service Provision Date**” means the date on which the Services are ready-to-use as notified by HGC to the Customer or on which the Customer actually uses the Services, whichever is earlier.

“**Service Request Date**” means the date on which the Customer desires the Services to be ready-for-use, as specified in the Order Form.

“**Software**” means any software in object form code from time to time supplied by Microsoft to HGC, or through HGC or otherwise to the Customer for the sole purpose of using the Services under the terms of the relevant Agreement.

“**Subscriber Access License**” and/or “**SAL**” means the license granted by Microsoft to HGC, Customer and Authorized End Users to use the Software. Copies of the latest version of the SAL can be found in Microsoft Web Sites, <http://www.microsoft.com> or other websites from time to time adopted by Microsoft.

3. **HGC’s Responsibilities**

- a. HGC will provide the Customer with the Services on the condition that HGC may:
 - i. Deactivate the Services any time without notice to carry out system maintenance, upgrading, testing and/or repairs;
 - ii. Limit / suspend the Customer’s access to the Services without notice where HGC is of the opinion that such action is appropriate to stop the improper or inappropriate use of the Services by the Customer or any third parties; and/or



- iii. By giving the Customer not less than 7 days' written notice (or otherwise in accordance with the terms of the SAL or the agreements between HGC and Microsoft or any Microsoft's licensed service providers) by email or by post, expand, reduce and / or modify any of the Services, amend the amount of any fees, introduce new fees and / or amend the terms & conditions of these Terms and Conditions for Business eMail Service or any Agreement, and / or amend any operating rules which govern the Customer's use of the Services.
- b. Customer may from time to time nominate and authorize any Authorized End Users to set up, configure, manage and use the Services ordered by the Customer, provided that the Customer shall procure the Authorized End Users to observe the provisions of the relevant Agreement and shall at all time be responsible for any breach, non-compliance or non-observance of the provisions of the relevant Agreement and all default, negligence, act or omission of the Authorized End Users in relation to their setting up, configuring, managing and use of the Services ordered by the Customer.

4. The Customer's Acknowledgments, Agreements and Responsibilities

- a. The Customer will:
 - i. At its own cost arrange and ensure that the necessary Customer Equipment and Customer Software (unless Customer Software will be provided by HGC pursuant to an Order Form) will be available for its Authorized End Users to access and use the Services pursuant to the relevant Agreement;
 - ii. Not use the Services as a means to
 - (i) Copy, distribute, publish, or transmit Messages in respect of which the Customer does not hold the appropriate intellectual property right or license to do so; or
 - (ii) Infringe the intellectual property right in such Messages;
 - iii. Not use, or allow others to use, the Services for distributing or transmitting Messages with a view to making a profit by charging the recipients in connection with such Messages;
 - iv. Not resell, or allow others to resell, the Services in whatever manner;
 - v. Only allow Authorized End Users to access the Services and be solely and wholly responsible for the Customer's use and any Authorized End Users' use of the Services;
 - vi. Not use, or allow others to use, the Services for any purpose HGC considers improper, immoral, defamatory, or otherwise unlawful or for any unsolicited advertising or promotion; nor allow others to act



in such a way that may jeopardize or impair the provision of the Services;

- vii. Not use the Services to publish, distribute, transmit or circulate any unsolicited advertising or promotional information or any Message that is obscene, indecent, seditious, offensive, defamatory, threatening, discriminatory, menacing or in breach of confidence;
 - viii. Not hack, break into, access, or use or attempt to hack, break into, access or use any part of the Services, any Messages and / or any data areas and / or any of HGC's servers or Equipment in respect of which the Customer has not been appropriately authorized;
 - ix. Ensure that each of the Authorized End Users of the Services comply with the terms and conditions of the applicable Agreements;
 - x. Abide by all relevant laws of the Hong Kong Special Administrative Region ("Hong Kong") and any operating rules, as amended from time to time, when using the Services;
 - xi. Subject to any other terms contained in the relevant Agreements, not assign, transfer or sublicense all or any part of the Customer's rights or obligations under the relevant Agreements; and
 - xii. Not use the Services in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to copyrights or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party.
- b. The Customer acknowledges and agrees that:
- i. HGC may, upon accepting the Customer's request for Services as contained in the Order Form, inform the Customer of a date intended to be the Service Provision Date (the "Intended Service Provision Date"), which may be different from the Service Request Date;
 - ii. While HGC shall use reasonable endeavours to deliver the Services on or before the Intended Service Provision Date, the inability of HGC to deliver Services by such date shall in no event be considered a breach by HGC under any Agreement;
 - iii. The Services are deemed accepted by Customer on the Service Provision Date unless written notice to the contrary is received from the Customer within three (3) days of the Service Provision Date;



- iv. Unless otherwise agreed by HGC in writing, no credit or refund is available in respect of any time where the Services are “down”, delayed or suspended;
- v. Subject to sub-clause 4.b.vi. below, it is not HGC’s policy to access or exercise any control over or to edit or amend any Messages before it is transmitted or made available through the Services.
- vi. HGC may implement and use anti-virus software, anti-SPAM software and software that protects HGC’s network security and integrity, which may automatically scan or check some or all Messages transferred through the Services. If any Message is detected to contain a virus, classified as SPAM messages, or identified to have compromised HGC’s network security or integrity, or cannot be duly scanned, the software may without notice permanently remove, modify or delete the Message and its attachments or attach warnings to the Message. Neither the intended recipient(s) nor the message sender will receive any notification of the message removal, modification or deletion. Neither HGC nor any third parties service providers (including but not limited to those providing the relevant software) shall be responsible for loss or damages suffered by Customer or any Authorized End User caused by or incidental to the removal modification or deletion of any Messages.
- vii. By installing and using the Services and / or the Software, the Customers and the Authorized End Users will be deemed to have agreed to observe and be bound by the provisions of the relevant Agreement and the Subscriber Access License from time to time applicable to the Software and Service.
- viii. HGC may use any information collected from the Customers and / or the Authorized End Users in the course of providing the Services in relation to the Software, if any, to improve HGC’s products or to provide customized services or technologies to Customer, the Authorized End Users and other subscribers of the Services. HGC will handle such information in accordance with HGC’s Privacy Policy Statement and Personal Data Collection Statement.
- ix. In handling any personal data, HGC will follow the provisions of its Privacy Policy Statement and Personal Data Collection Statement, a copy of which can be found in HGC corporate website, which will be updated from time to time without prior notices.
- x. The features and details of the Services is dependence upon the features of the Software and the licenses terms thereof and will be subject to change without prior notice if the features of the Software and the licenses terms thereof changes pursuant to the relevant licenses terms.
- xi. During the performance of the Agreement, if HGC’s costs increase due to changes in import and/or export tariffs in any Country (or Region), both Parties agree that HGC shall not be prejudiced as a result of such changes or requested to assume the costs. Both Parties agree that the total contract price shall be adjusted in



accordance with the actual changes in tariffs. HGC shall notify the Customer of the tariff changes in a timely manner and provide relevant supporting documents (official documents of tariff adjustments or Customs documents). The Customer shall pay to HGC at the latest price after receiving the notification.

- c. Without prejudice to clause 5 of HGC's General Terms and Conditions, HGC shall in no event be responsible for or liable to:-
 - xi. Any failure or delay to deliver any Messages or information through the Service;
 - xii. Any losses of data or Messages by the Customer or the Authorised End Users. The Customer and the Authorised End Users are solely responsible for backing their own data; or
 - xiii. Any recovery, resumption or restoration of any data or Messages of the Customer or the Authorised End Users. HGC reserves the right to charge the Customer a reasonable sum in case if HGC agree to recover, resume or restore any data or Messages for the Customer.
- d. The Customer agrees to indemnify and keep HGC indemnified against any action, liability, cost, claim, loss, damage, proceeding, expense (including without limitation legal costs on solicitor and own client basis) suffered or incurred by HGC arising from or which is directly or indirectly related to:
 - xiv. The Customer's use or any other person's use of the Services with the Customer's authorization or with Customer's account information and password; and
 - xv. Any breach, non-compliance or non-observance of any provisions contained in an Agreement by the Customer including without limitation claims arising from or for any acts or Messages alleged to be illegal, defamation, intellectual property right infringement, damage to computer database, loss of data, distribution of obscene or offensive material; or property infringement, damage to computer database, loss of data, distribution of obscene or offensive material.

5. Minimum Commitment Period

- a. Unless otherwise agreed by HGC, the contract period for the Services shall be the Minimum Commitment Period, or such longer period as elected by the Customer in the Order Form and accepted by HGC. The Customer shall pay HGC Cancellation Fee if the Customer terminates this Agreement or HGC terminates this Agreement owing to Customer's breach, default or negligence within the Minimum Commitment Period

6. Software License

- a. Unless otherwise specified in an Order Form duly accepted by HGC, the Customer shall at its own costs arrange and ensure the Customer Software will be available for Customer to access the Services.



- b. If Customer Software will be provided by HGC pursuant to any Order Form, HGC hereby grants, or procures Microsoft or Microsoft's licensed service providers to grant, the Customer and / or the Authorized End Users a limited, non-exclusive and non-transferable license to install and use the Customer Software for the sole purpose of accessing the Services by the Customer and the Authorized End Users in accordance with the terms and conditions of an Agreement and the SAL. In respect of the other Software (if any), the Customer's use thereof is bound by the relevant accompanying software licenses.
- c. All Software can only be used by the Authorized End Users.

7. Services Provisioning

- a. The Customer agrees that:
 - i. The provision of the Services is subject to the successful installation and configuration of the Customer Equipment and Customer Software by the Customer, and HGC shall in no event be responsible for such installation and configuration.
 - ii. The Customer shall be solely responsible, prior to installation or configuration of Customer Equipment and Customer Software, to back up its own data on the Customer Equipment, and inform HGC if any configuration or installation of Customer Software may invalidate any support arrangements or other functions of the Customer Equipment or the Equipment;
 - iii. HGC shall in no event be liable for any loss or damage (including but not limited to loss of data or damage to Customer Equipment or other properties) suffered by the Customer, the Authorized End Users or any other persons arising directly or indirectly from or incidental to their use of the Services and/or the Software.

8. Account Detail Information

- a. In order to access and use the Service, the Customer will be given the necessary account login information and password and the Authorized End Users may be allowed to create and registered on behalf of the Customer any further necessary account login information and passwords. The Customer will not acquire any rights in any account login information and passwords, including email accounts and the associated domain names. The Customer shall keep the account login information and passwords strictly confidential and do not disclose it to anyone other than the relevant Authorized End Users. The Customer shall be responsible for all the activities and use of the Services through such account login information and passwords. The Customer shall notify HGC immediate and change its passwords if the Customer knows or suspects



that any authorized person might know account login information and/or passwords or the same have otherwise been compromised.

- b. Upon termination of the Services or the relevant Agreement, the Customer shall remove all Configuration Information from the Customer Equipment and other records kept by the Customer or its Authorized End Users and the Customer shall forthwith withdraw from any further use of the same whatsoever. In the event that the Customer or any Authorized End Users use any of such Configuration Information after termination of the Services or the relevant Agreement, the Customer shall keep HGC fully indemnified against any costs, claim, damage or loss that may be caused to HGC or third parties as a result thereof or incidental thereto.

9. Ownership of Software Products

- a. The Software (and Customer Software, if included in an Order Form) are licensed to HGC from Microsoft through a Microsoft licensed service provider. All title and intellectual property rights in and to the Software (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the Software) are owned by Microsoft and/or its suppliers. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Customer’s or its Authorized End Users’ possession, access, or use of the Software does not transfer any ownership of the Software or any intellectual property rights to the Customer’s or any of its Authorized End Users.
- b. The installation and use of the Software and Customer Software are subject to the related licence terms of the Software and Customer Software, including but not limited to the SAL.

10. Service Termination

- a. Should Customers or any of its Authorized End Users abuse the Services (including but not limited to sending email bomb, hacking, etc); or otherwise breach, or fail or refuse to comply or observe of any provisions herein or in the relevant Agreement and/or Software licences; or are against the laws of Hong Kong, HGC has the right to terminate / suspend the Services at any time immediately without prior notice. Notwithstanding such termination or suspension, HGC will not be responsible for any loss thereby caused or attributed thereto and any payment that has been made by the Customer will be not be refunded.

11. Terms and Conditions

- a. In the event of there being conflicts between the terms and conditions that constitute an Agreement, the conflicts shall be resolved in accordance



with the following order of priority so that the terms and conditions of a higher priority shall prevail over those of a lower priority:

- (i) The Order Form;
- (ii) These Special Terms and Conditions for HGC Business eMail Services; and
- (iii) HGC's General Terms and Conditions.
