



## Special Terms and Conditions for HGC Business Broadband Services

### 1. Description

The "Services" are the HGC Business Broadband Services and is more particularly defined in the Order Form / Sales Agreement. The Services are provided pursuant to the terms and conditions of an Agreement.

### 2. Definitions

#### **"Agreement"**

means, in relation to the Services ordered under each Order Form / Sales Agreement accepted by HGC, that Order Form / Sales Agreement together with these Special Terms and Conditions for HGC Business Broadband Services and HGC's General Terms and Conditions.

#### **"Authorised Users"**

means units of computer equipment identified in the Order Form / Sales Agreement as authorised by the Customer to use the Services.

#### **"Configuration Information"**

means information with which the Customer Interface Equipment and other relevant computer equipment of the Customer must be configured for the sole purpose of obtaining 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.

#### **"Contents"**

includes any contents, software, data, information, diagram, symbol or other material in whatever languages or forms (including textual, audio, video, still and moving images, graphical, musical or other contents or information or goods or services) able to be accessed over the Internet or any Intranet from time to time.

#### **"Customer"**

means the customer specified in an Order Form / Sales Agreement to whom the Services are to be provided under this Agreement by HGC.

#### **"Customer Interface Equipment"**

means the one unit of the equipment of the Customer, directly connected to HGC's RJ-45 socket, in which Hardware, if applicable, will be installed.

#### **"Hardware"**

means any equipment and hardware provided by HGC and installed or placed at the Customer's premises.

#### **"HGC"**

means HGC Global Communications Limited.



**"IP address" or "Internet Protocol address"**

means each IP address allocated to the Customer by HGC from time to time pursuant to an Agreement.

**"Minimum Commitment Period"**

means unless otherwise agreed by HGC, twelve (12) months from the Service Provision Date.

**"Order Form / Sales Agreement"**

means the standard form prescribed by HGC for the Customer to fill in to order the Services.

**"Service"**

means services which are more particularly defined in the Order Form / Sales Agreement and which involve the provision of Internet access, software and hardware and other Internet work-based technological services to be supplied by HGC as described in the Order Form / Sales Agreement.

**"Service Provision Date"**

means the date that the Services to be provided by HGC to the Customer is ready-to-use as notified by HGC to the Customer or which the Customer 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 / Sales Agreement.

**"Software"**

means any software in object form code supplied by HGC to the Customer from time to time under the terms of this Agreement.

**"System Integrator"**

means the system integrator instructed by HGC to carry out, on its behalf, certain system integration work for the Customer pursuant to the Agreement.

**3. HGC's responsibilities**

- a. HGC will provide the Customer with the Services on the condition that HGC may:
  1. deactivate the Services at any time without notice to carry out system maintenance, upgrading, testing and / or repairs;
  2. 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; and
  3. by giving the Customer not less than 7 days' written notice 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 an Agreement, and / or amend any operating rules which govern the Customer's use of the Services.
- b. HGC shall provide the Services so that only the Authorised Users as set out in the Order Form / Sales Agreement and as approved by HGC can have access to the Services.



- c. In terms of the installation and system integration work required for the provision of the Services, HGC shall, in respect of the Services provided to each premises of the Customer as particularized in the relevant Order Form / Sales Agreement accepted by HGC:
  1. provision, install, commission and test a RJ-45 socket;
  2. provision, install, commission and test a LAN card in the Customer Interface Equipment;
  3. provision, install and/or re-configure the "Network Address Translation" software in the Customer Interface Equipment solely for the purpose of enabling access to the Services; and
  4. configure the Customer Interface Equipment and other relevant computer equipment of the Customer with the Configuration Information solely for the purpose of enabling access to the Services.

#### **4. The Customer's acknowledgments, agreements and responsibilities**

- a. The Customer will:
  1. not use the Services as a means to (i) copy, distribute, publish, or transmit Contents in respect of which the Customer does not hold the appropriate intellectual property right or licence or (ii) infringe the intellectual property right in such Contents;
  2. not use, or allow others to use, the Services for distributing or transmitting Contents with a view to making a profit by charging the recipients in connection with such Contents;
  3. not resell, or allow others to resell, the Services in whatever manner;
  4. only allow Authorised Users to access the Services and be responsible for the Customer's use and any Authorised Users' use of the Services;
  5. 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;
  6. not use the Services to publish, distribute, transmit or circulate any unsolicited advertising or promotional information or any Content that is obscene, indecent, seditious, offensive, defamatory, threatening, discriminatory, menacing or in breach of confidence;
  7. not hack, break into, access, or use or attempt to hack, break into, access or use any part of the Services, any Contents and / or any data areas and / or any of our servers in respect of which the Customer has not been appropriately authorized;
  8. ensure that each of the Authorised Users comply with the terms and conditions of an Agreement;
  9. abide by all relevant laws of Hong Kong SAR and any operating rules, as amended from time to time, when using the Services;



10. subject to any other terms contained in the Agreement, not assign, transfer or sub-licence all or any part of the Customer's rights or obligations under the Agreement; and
  11. 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 that:
1. HGC may, upon accepting the Customer's request for Services as contained in the Order Form / Sales Agreement, inform the Customer of a date intended to be the Service Provision Date (the "Intended Service Provision Date") which is different from the Service Request Date;
  2. 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 not be a breach by HGC under any Agreement;
  3. the Services are deemed accepted 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;
  4. access time is calculated on a monthly basis according to the order made, e.g. unused "free usage hours", if applicable, cannot be carried forward to the following month;
  5. unless otherwise agreed by HGC, no credit or refund is available in respect of any time where the Services are "down" or suspended; and
  6. except for those Contents which are supplied by HGC as principal, it is not HGC's policy to exercise any editorial control over or to edit or amend any Contents before it is transmitted or made available through the Services.
- c. 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:
- i. The Customer's use or any other person's use of the Services with the Customer's authorisation; and
  - ii. any breach or non-observance of any provision contained in an Agreement by the Customer
- including without limitation claims arising from or for any act alleged to be illegal, defamation, intellectual property right infringement, damage to computer database, loss of data, distribution of obscene or offensive material.

## **5. Minimum Commitment Period**

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 / Sales Agreement and accepted by HGC.



## 6. Software License

1. HGC hereby grants the Customer a non-exclusive and non-transferable licence to use those Software in respect of which HGC is entitled so to do, solely for the purpose of accessing the Services by the Customer and the Authorized Users in accordance with the terms and conditions of an Agreement. In respect of the other Software, the Customer's use thereof is bound by the relevant accompanying software licences.
2. The Software can only be used by and shared among the Authorized Users.

## 7. Services Provisioning

- a. The Customer agrees:
  - i. that the provision of the Services is subject to the successful configuration of the Customer Interface Equipment and the Customer's other computer equipment and the installation of the relevant Hardware and Software in accordance with Clause 3c hereof;
  - ii. to authorize HGC or the System Integrator acting on HGC's behalf to configure the Customer Interface Equipment and the Customer's other relevant computer equipment and install the relevant Hardware and Software to enable HGC to provide the Services to the Customer;
  - iii. that it will be the Customer's responsibility prior to installation or configuration of Hardware or Software to back up data on the Customer's computer equipment or the Customer Interface Equipment and inform HGC if any configuration or installation by HGC may invalidate any support arrangements or other functions of the Customer's said equipment;
  - iv. that HGC reserves the right not to configure the Customer Interface Equipment or any of the Customer's computer equipment or install the related Hardware or Software in accordance with Clause 3c hereof as HGC deems appropriate at HGC's discretion;
  - v. that HGC will not be liable for any loss or damage (including loss of data) suffered by the Customer or any other person arising directly or indirectly from HGC's configuration or installation work under Clause 3c hereof or HGC's exercising HGC's right not to carry out such configuration or installation work in accordance with Clause 7(a) (4) hereof;
  - vi. the Customer warrants that the Customer owns the Customer Interface Equipment and the relevant computer equipment on which HGC conducts configuration and installation activities pursuant to this Clause 7;
  - vii. if the Customer does not own the Customer Interface Equipment and the computer equipment, the Customer agrees to obtain the consent of the relevant owner(s) before HGC will carry out any such activities; and
  - viii. the configuration and installation work pursuant to Clause 3c hereof and the provision of Services under this Agreement are both subject to the Customer Interface Equipment and the Customer's other relevant computer equipment meeting basic requirements (if any) for configuration as specified in the Order Form / Sales Agreement.



## **8. Account Detail Information**

1. Any IP address that is assigned to the Customer for the Customer's use by HGC under this Agreement is neither owned by the Customer nor by HGC. Such IP address is allocated to HGC by regional registries so that HGC can assign the same to the Customer for its use only and the Customer shall have no other rights or any title thereto.
2. Upon termination of the Services or this Agreement, the Customer shall return all Configuration Information, including but not limited to IP address, to HGC and the Customer shall remove all such Configuration Information from the Customer Interface Equipment and the Customer's relevant computer equipment and the Customer shall withdraw from any further use of the same whatsoever. In the event that the Customer uses any of such Configuration Information after termination of the Services or this 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.
3. HGC reserves the right to withdraw from the Customer Equipment or any of the Customer's relevant computer equipment any Configuration Information at any time without notice.

## **9. Customer Support and Maintenance**

- a. The Customer acknowledges and agrees that, apart from the RJ-45 socket which shall remain the property of HGC, the title to all Hardware shall be passed to the Customer on the Services Provision Date and, unless otherwise agreed by HGC and subject to 9b below, no warranty in respect of any Hardware will be given by HGC whatsoever or by any other party save and except the warranty (if any) given by manufacturer(s) or vendor(s) of the Hardware concerned.
- b. HGC agrees that:
  - i. for a period of one week after the Services Provision Date, HGC will provide customer support to the Customer in respect of the Services, which shall be comprised solely of trouble-shooting of problems arising from (i) the cable connecting the RJ-45 socket and the Customer Interface Equipment where the LAN card is installed, (ii) the LAN card and (iii) the "Network Address Transaction" software; thereafter, HGC may, upon the Customer's request, provide problem isolation support related to the above on a time (at the prevailing hourly rates of HGC) and material basis; and
  - ii. HGC will use reasonable endeavour to maintain HGC's networks (which, for the avoidance of doubt, terminate at the RJ-45 socket) so that Services can be provided during the term of any Agreement.

## **10. System Integrator**

The Customer acknowledges that HGC may sub-contract to a System Integrator the installation and system integration work and the troubleshooting work respectively referred to in Clauses 3c and 9b(i) above. For the avoidance of doubt, any work beyond the scope of (i) the work itemized in Clause 3c above and (ii) those trouble-shooting work referred to in Clause 9b(i) above which any System Integrator might undertake for any Customer will be work carried out by that System Integrator as principal and HGC shall have no responsibility and shall in no way be liable for such work or any claims, damage, liabilities or obligations that may arise therefrom.



## **11. Terms and Conditions**

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:

- (a) the Order Form / Sales Agreement;
- (b) these Special Terms and Conditions for HGC Business Broadband Services;
- (c) HGC's General Terms and Conditions.