

**HGC GLOBAL COMMUNICATIONS LIMITED  
CO-LOCATION SERVICES**

**TERMS AND CONDITIONS**

**1. DEFINITIONS:**

“Agreement” – means these terms and conditions and the attached Order Form. In the event of a conflict between the provisions of the Order Form and these Terms and Conditions, the Order Form shall prevail.

"Cabinet"- means the metal cabinet equipped with a lock, placed in the Co-location Space and in which the Equipment is installed/housed.

"Co-location Fee"- means the monthly amount set forth in Order Form and payable pursuant to the related payment terms referred to in this Agreement.

“Co-location Service”– means the service of providing – housing facilities for Equipment installed/housed in the Co- location Space, together with other ancillary services provided under this Agreement.

“Customer” – means the Party accepting and signing the Order Form.

“Effective Date” – means the date the Agreement is signed by HGC.

"Equipment"- means the equipment of the Customer installed/housed in the Co-location Space.

“HGC” – means HGC Global Communications Limited or its affiliated company as identified in the Order Form.

“Order Form” – means the HGC Co-location Order Form to which these terms and conditions are attached.

“Parties” – shall mean HGC and Customers collectively and “Party” means either of them.

"Premises" - means the premises identified as the “Location” in the Order Form.

“Co-location Space” – means the space, cabinet and/or caged space with which the Co-location Service is provided.

“Remote Hands Service” – means services ancillary to the provision of housing facilities, the detailed description of which and the terms and conditions under which it is provided is set out under Clause 2.4.2.

**2. DESCRIPTION OF SERVICES**

2.1 HGC shall, either directly or through its affiliates or underlying carriers, provide the Co-Location Service to the Customer per these terms and conditions and the specifications set forth in the Co-Location Service Order Form.

2.2 Pursuant to the chosen options as set out in the Order Form, HGC shall provide Co-location Service with the Co-location Space in any or a combination of the three different configurations as set out below:

2.2.1 Rack Space

Provision of a space in the Premises accessible to other HGC customers. The dimensions of such space are set out in the Order Form.

2.2.2 Cabinet

Provision of a Cabinet located in an area of the Premises which is accessible to other HGC customers. The external dimensions of the Cabinet are set out in the Order Form.

2.2.3 Dedicate Caged Space

Provision of a caged space in the Premises specifically designated to the Customer and is not shared with other HGC customers. The dimensions of the caged space are set out in the Order Form and the configuration of the caged space shall be in accordance with rules and standards set by HGC

2.3 The Co-location Service provided under the Agreement shall include 8 hours of Remote Hands Service per month.

2.4 Provision of Additional Services

The Customer may also opt for the following value added Co-location services

2.4.1 Cross Connect Service

Installation of cross connections between the Equipment and the various other equipment in the Premises constituting parts of local or international networks as specified in the Order Form.

2.4.2 Remote Hands Service

Remote Hand Service is a basic operational, preventive and corrective maintenance service provided by HGC to the Customer for a number of hours per month (as provided for in the Agreement) on a 7x24 availability basis involving the following tasks:

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- Pushing a button
- Switching a toggle
- Setting a dip switch
- Turning on or off power cycling (turning on and off) equipment
- Securing cabling connections
- Observing, describing or reporting on indicator lights or display information on the equipment
- Keying in instructions through keyboard
- Simple arrangement for the cables
- Card re-seating

The Remote Hand Service is performed in accordance with the Customer’s written instructions (which instructions must be clear, specific and not misleading) and the responsibility for the outcome of the actions performed lies with the Customer. In no way is HGC responsible for the outcome of any Remote Hand Service provided in accordance with the Customer’s instructions.

The Customer shall give written instruction to HGC for such remote hands task by way of emails to:  
[RemoteHands@hgc.com.hk](mailto:RemoteHands@hgc.com.hk)

HGC shall provide on-site telephone support pursuant to written notice given to HGC in order to identify malfunctions in connection with the Customer.

Each task comprising the Remote Hand Service will be carried out by HGC as soon as practicable and in any event, within 4 hours of HGC’s receipt of Customer’s written instruction. The minimum time log for each task shall be 1 hour and on a task exceeding 1 hour, minimum increment thereafter shall be 30 minutes. The number of hours of Remote Hand Service to which a Customer is entitled per month shall be exhausted at the end of each calendar month and shall not be accumulated with the Customer’s entitlement in respect of any other month.

**2.4.3 Additional Remote Hands Service**

Provision of the Remote Hands Service, which specified in Clause 2.4.2, in addition to the basic 8 hours per month entitlement at the price and under the additional terms and conditions as set out in the Order Form.

2.5 HGC shall provide the Co-location Service forming the subject matter of this Agreement with reasonable care and skill and in accordance with this Agreement, but: (a) HGC will not be in breach of this Clause as a result of any failure or interruption of any of the Co-location Services: (i) resulting from circumstances beyond HGC’s reasonable control, so long as HGC uses its reasonable endeavours to remedy the same as soon as reasonably practicable after becoming aware

of such circumstances; or (ii) to the extent that the Co-Location Services (or any of them) cannot reasonably be provided as a result of works of inspection, maintenance and repair or other works being carried out at the Premises; HGC does not in any way guarantee that the Equipment being co-located may operate without any defect and/or malfunction and/or interruption and/or the Co-location Space or works in response to network-affecting disruptions.

2.6 Save for the Cross Connect Service as may be provided by under Clause 2.4.1 above, the Co-location Service does not include installation of the Equipment in the Co-location Space. The Customer agrees to bear in this respect all risks related to the relevant transportation and/or installation.

2.7 The Customer is responsible for all aspects of receipt, installation and removal of Equipment, including the provisioning of appropriate equipment, tools and packaging materials. Customer (or its designated agent) shall sign for any Equipment delivered to the Premises. HGC may sign for receipt of Equipment, but shall not be obligated to do so, and if it does sign for any deliveries, it does not assume any responsibility in respect thereof.

2.8 The Co-location Service may be provided in conjunction with underlying third party supplier. These terms and conditions as well as HGC’s obligations under this Agreement apply only to the Co- location Service provided by HGC or delivered over HGC facilities and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a third party supplier for use in accessing the Co-location Service.

2.9 The Co-location Service involves the provision of a service to the Customer and does not in any way amount to or involve any transfer, assignment, lending, underletting, licensing, sharing of or parting with the possession of the Co-location Space or any part thereof.

**3. TERM**

3.1 This Agreement shall become effective on the date the Order Form is accepted by HGC in writing and shall continue from the Co-location Service Date (as defined in Clause 3.2 below) for an initial Co-location Service term (“Term”) as specified in the Order Form. In the event the Customer does not wish to renew this Agreement, the Customer must notify HGC by giving at least thirty (30) days prior written notice before the expiry of the Term, of its intention to terminate this Agreement, and in such event, this Agreement shall expire and terminate at the expiration of the Term. In the absence of such notice, this Agreement shall automatically renew on yearly intervals on the same terms and, unless otherwise agreed by the Parties, with

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revised fees of 10% increase per renewal term on the Charges (as defined under Clause 5.1 below) immediately before the renewal payable by Customer.,. All terms and conditions in effect as of the last day of the initial Term or any applicable renewed Term shall apply to the subsequent renewed Term.

3.2 HGC shall endeavor to commence delivery of Co-location Service on the requested co-location service date specified in the Order Form. The delivery of Co-location Service shall be notified to the Customer in writing and the Co-location Service shall thereupon be deemed to have been accepted by the Customer on such delivery date (Co-location Service Date). Unless otherwise agreed in writing, the Customer shall be solely responsible to coordinate the provisioning of its respective facilities and equipment (i.e. transportation, installation, etc.) by the Co-location Service Date.

**4. OPERATIONAL AND COMMERCIAL MATTERS**

4.1 The Co-location Service shall be provided, and shall be used by the Customer, in accordance with the specification in the Order Form.

4.2 On twenty-four (24) hours' prior notice in writing to HGC (or in case of emergency on such prior notice as is reasonable) Customer is entitled to have access to the Co-location Space to inspect maintain adjust repair alter replace or remove the Equipment.

4.3 HGC reserves the right (a) to enter the Co-location Space at all times; and (b) to refuse access to the Premises and/or the Co-location Space or remove from the Premises and/or the Co-location Space any employees and sub-contractors of the Customer whose admission or presence is or would be in the reasonable opinion of HGC detrimental to the security of the Premises and/or the Co-location Space or in respect of whom the Customer has failed to request a right of access from HGC and HGC will not be responsible for the consequences of any such refusal or failure or delay by the Customer in notifying it of its access requirements.

4.4 The Customer accepts that HGC shall be entitled to disconnect or physically terminate or detach or remove cables or any Equipment laid by the Customer in breach of this Agreement. HGC shall be held harmless against and not be liable for any loss, damage, costs and other expenses of any nature whatsoever incurred or suffered by the Customer whether direct or consequential arising out of or in relation to the aforementioned disconnection, termination, detachment or removal provided that such work is carried out by HGC in a reasonable and timely manner.

4.5 HGC may carry out works scheduled in the Premises. Such works may entail a suspension of the related Co-location Service during one or more periods. If such works affect the related Co-location Service provided to the Customer, HGC shall give the Customer at least two (2) working days notice for such works ("Maintenance Notice") save where such works are required due to an emergency in which case HGC shall seek to give the Customer as much prior notice as practicable. HGC shall make its reasonable efforts to carry out such works under conditions likely to mitigate any disturbance suffered by the Customer.

4.6 The Customer agrees:

4.6.1 To maintain the Equipment in good working order and to procure that the Co-location Space is kept tidy and safe at all times.

4.6.2 To comply with the Rules & Regulations to Co-location Facilities as may be notified by HGC to the Customer from time to time and ensure that (without limitation):

- (a) no installation or modification alteration or addition to the Equipment would adversely affect the floor loading or environmental conditions of the Premise and/or the Co-location Space; and
- (b) the maximum heat output of the Equipment does not exceed the maximum as notified by HGC from time to time; and
- (c) the maximum power drawn by the Equipment does not exceed the maximum as specified in the Order From.

4.6.3 To comply with the requirements of any laws, statutes, rules, regulations and codes of practice applicable to the Premises or its use and the Rules and Regulations to Co location Facilities as may be notified by HGC from time to time (any breach of any of such requirements shall be deemed to be a material breach of a material term of this Agreement).

4.6.4 Not to use the Co-location Space except for the retention and operation of the Equipment nor cause any injury, damage or nuisance to or, interference with any person or property including (without limitation) the Premises and/or any equipment owned by third parties which may from time to time be located in the Premises.

4.6.5 Not to make any alteration or addition (whether structural or non-structural) whatsoever in on or to the Co-location Space.

4.6.6 To make good any disrepair for which the Customer is liable or any unauthorised alterations within fourteen days after the date of

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written notice from HGC (or sooner if HGC reasonably requires) and if the Customer fails to comply with any such notice HGC may carry out the work, and the cost shall be reimbursed by the Customer on demand as a debt.

- 4.6.7 To maintain at all times a complete and accurate inventory of the Equipment and to supply to HGC a copy of the same (and any variation thereto from time to time).
- 4.6.8 To be responsible for the payment directly to the relevant carriers or suppliers of all fees and charges payable in relation to the ordering and/or installation and/or rental and use of communications circuits from public telecommunications carriers or suppliers and in relation to the provision of maintenance and support services.
- 4.6.9 To supply to HGC of the Customer's telecoms licences and related documents as HGC may reasonably require and to notify HGC of any change to revocation or renewal of any of the same within seven (7) days of such change revocation or renewal.
- 4.7 If it becomes necessary to relocate the Equipment to another Co-location Space, the Customer shall cooperate with HGC in connection with such co-location provided that such co-location is for (i) the reasonable business needs of HGC; or (ii) an increase or decrease in the Customer requirements; or (iii) the removal of the Equipment from the Premises altogether. The initiating party for such co-location shall bear all costs associated with co-location and will use all reasonable efforts, in cooperation with each other, to minimise any interruption to the Co-location Service.
- 4.8 HGC reserves the right to cancel and/or temporarily suspend Co-location Service with the Customer if the Customer is engaged in activities which may potentially or actually cause disruption or damage to HGC or its network. HGC shall use reasonable efforts to provide the Customer with advance notice of such suspension and in any case shall endeavor to provide written confirmation of such action within a commercially reasonable time thereafter.
- 4.9 The Customer hereby appoints HGC as its agent only for the purpose of establishing related Co-location Service with a third party supplier as may be required in connection with this Agreement. Where required or requested by HGC, the Customer shall provide HGC with appropriate letter(s) of agency or authorization(s) to enable and authorise HGC to render the Co-location Service.
- 4.10 The Co-location Service is offered subject to the

availability of the necessary facilities and/or equipment and subject to the terms and conditions of this Agreement.

- 4.11 Where applicable the Customers shall provide the necessary documents and training to HGC for provision of Remote Hands Service.

**5. PRICING AND BILLING**

- 5.1 For the Co-location Service provided pursuant to this Agreement the Customer shall, throughout the Term, pay HGC the charges specified as payable in the Order in respect of the Services (the "Charges") For the avoidance of doubt, the Charges for the Services will consist of :
  - 5.1.1 the Co-location Fee ; and/or
  - 5.1.2 charges payable or paid by us to the third party attributable to the Service provided to you (including but not limited to government charges/levies, increased rent from property lessors and electricity supply charges), which will be paid by us but reimbursed by you as and when we have incurred these Charges.
- 5.2 Commencing on the Co-location Service Date, HGC shall invoice the Customer in advance for the Co-location Service. Any non-recurring (i.e. inspection, maintenance service) charges shall be invoiced in arrears as soon as practicable after the month to which such non-recurring service relate.
- 5.3 All amounts due hereunder shall be invoiced by HGC in U.S. Dollars unless otherwise specified in the Order Form. For charges in non U.S Dollar, when HGC (in its sole discretion) considers that there is a significant currency fluctuation, HGC reserves the right and discretion to invoice the Customer for the U.S. Dollar equivalent based on the currency exchange rate stated in the Order. The Co-location Fee shall be payable to HGC within thirty (30) days of the date of HGC's invoice. If the Customer in good faith disputes any invoiced amount, it shall submit to HGC within thirty (30) days following receipt of such disputed invoice, full payment of the invoice and written documentation identifying and substantiating the disputed amount. The Parties shall investigate the matter and upon mutual agreement, a credit against future invoices may be issued by HGC. In no event shall HGC be responsible for any fraudulent or unauthorized use of the Co-location Service or any amounts the Customer is unable to collect from its customers or end users. Any amounts due hereunder that are not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month, compounded daily, beginning with the day following the date on which payment was due, and continuing until paid in full. Further, HGC shall have the right to set off any amounts due hereunder which are not paid when due against any amounts owed to the Customer

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by HGC or any of its affiliates pursuant to any other agreement or arrangement. In addition, HGC shall have the right to apply any payment received hereunder from the Customer against any outstanding and overdue amount owed to HGC or any HGC affiliate by any entity that directly or indirectly control or is controlled by the Customer.

5.4 HGC reserves the right at any time to require the Customer to provide to HGC a deposit, irrevocable letter of credit, or other form of security acceptable to HGC (the "Deposit"). Upon receipt of HGC's written request for a security, the Customer shall have five (5) business days to provide or implement such security and if the Customer fails to comply with such request within said period, then HGC shall be authorized to immediately suspend the delivery of Co-location Service and/or terminate this Agreement without further notice or demand.

5.5 All Co-location Fees and other charges due hereunder are exclusive of all applicable taxes (collectively, "Taxes"), including withholding tax, value added tax, sales taxes, duties, fees, levies or surcharges (including where applicable any universal service fund or similar surcharges) imposed by, or pursuant to the laws, statutes or regulations of any government agency or authority, all of which shall be paid promptly when due by the Customer. The Customer agrees to pay HGC such further amounts as would have been necessary so that the aggregate net amount received by HGC after deduction or withholding of any Taxes, shall be the same amount as would have been received by HGC if there had been no requirement to deduct or withhold any Taxes.

5.6 The parties expressly agree that HGC may, upon written notice to Customer, retain any Equipment or other assets housed at the relevant Co-location Space as security for payment and due compliance of any other obligations of Customer under this Agreement and sell them in satisfaction of any unpaid sums or other compensation awarded to HGC with respect to any default or breach of this Agreement.

5.7 If the amounts remaining due to HGC by Customer remain unpaid after a period of thirty (30) days from the expiration or termination of this Agreement, HGC may, in exercise of its discretion decide to vacate the relevant Co-location Space by transferring the Equipment to a storage area inside or outside the Premises, at Customer's sole risk and expense.

5.8 The parties expressly agree that HGC reserves the right to review and revise (whenever necessary) the Charges stated under Clause 5.1 above from time to time. Prior notice will be given to Client in the event of any material changes to the Charges.

**6. TERMINATION**

6.1 HGC, without prejudice to its other rights hereunder, may immediately and without notice, suspend the delivery of Co-location Service and/or terminate this Agreement in the event that the Customer: (i) fails to provide a Deposit if required by HGC; (ii) fails to make any payment when due; (iii) becomes insolvent or bankrupt or ceases paying its debts generally as they mature.

6.2 Without derogation of HGC's rights under 6.1, either party may, without prejudice to its other rights, terminate this Agreement forthwith on duly providing written notice to the other party to that effect in the event that the other party neglects or fails to perform or observe any of the material terms, covenants, conditions or agreements contained in this Agreement, and such default or breach is continued for thirty (30) days after the date of the non-defaulting party's notice to the other party specifying the default and requesting that the same be promptly cured.

6.3 At the expiration or sooner termination of this Agreement, the Customer agrees to remove all Equipment from the Co-location Space and return it to the same condition as the it was in at the Effective Date of this Agreement, fair wear and tear only excepted. The Equipment and all of its other property not removed from the Co-location Space at the expiration or sooner termination of this Agreement shall be deemed abandoned.

6.4 In the case of early termination of this Agreement prior to the expiration of the Term by HGC pursuant to Clauses 6.1 or 6.2, or by the Customer for any reason other than pursuant to Clause 6.2, the Customer shall remain liable to pay HGC for the Co-location Fees for the remainder of the Term. The Customer understands and agrees that any breach by the Customer of its obligations under this Agreement shall also be deemed a breach by the Customer of its obligations under any other agreements it has entered into with HGC and/or its affiliates and understands and agrees that such breach shall authorize HGC and/or any of its affiliates to immediately suspend performance under, and/or terminate, said agreements with the Customer for default if such breach (es) have not been cured within the time provided for in Clause 6.2 above.

**7. LIMITATION OF LIABILITY**

7.1 HGC shall not be liable for the Customer's failure to fulfill its obligation to take all necessary steps including, without limitation, obtaining, installing, and maintaining all necessary equipment, materials and supplies or interconnecting the terminal equipment or communications system of the Customer, or its agent, to the HGC network. The Customer shall secure all leases and other arrangements necessary for such

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interconnection. The Customer shall also ensure that its Equipment and/or system or that of its agent is properly interfaced with HGC's facilities. The Customer shall indemnify HGC for any costs incurred by HGC as a result of the Customer's failure to fulfill any of the obligations stated above in this Clause 7.1.

7.2 HGC shall not be liable for any loss or damages sustained by the Customer or its end users arising under this Agreement by reason of any failure in or breakdown of the facilities associated with providing the Co-location Service, or for any interruption or degradation of the Co-location Service whatsoever shall be the cause or duration thereof, or for any other cause or claim whatsoever arising under this Agreement.

7.3 The Customer agrees to maintain at the Customer's expense, during the entire Term of the Agreement, comprehensive liability insurance that covers that property against any loss or physical damage in an amount not less than the actual value of Customer's property in the Co-location Space. Any such insurance policy shall name HGC as the additional insured and shall waive Customer's rights against HGC and its affiliates.

7.4 IN NO EVENT SHALL HGC BE LIABLE TO THE CUSTOMER FOR CONSEQUENTIAL, SPECIAL OR INDIRECT LOSSES OR DAMAGES SUSTAINED BY THE CUSTOMER OR ANY THIRD PARTIES IN USING THE CO-LOCATION SERVICE HOWSOEVER ARISING UNDER THIS AGREEMENT AND WHETHER UNDER CONTRACT, TORT OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, THIRD PARTY CLAIMS, LOSS OF PROFITS, LOSS OF CUSTOMERS, OR DAMAGE TO REPUTATION OR GOODWILL). NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THE PROVISION OF THE CO-LOCATION SERVICE.

7.5 Customer agrees to release, indemnify, defend, protect and hold harmless HGC, its employees, officers, directors, agents and affiliates ("Indemnified Persons"), from and against, and assumes liability for, the following:

- (a) any injury, loss or damage to any person, tangible property or facilities of any third person or entity or Indemnified Persons (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from either: (i) the acts or omissions, negligence or otherwise, of Customer, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees or vendors; or (ii) the acts and omissions of Customer constituting a default under this Agreement;

- (b) any claims, liabilities or damages arising out of any violation by Customer of any regulation, rule, statute or order of any governmental agency, court or body in connection with Customer's use of the Co-location Service or breach of the terms of Clause 12 hereunder;
- (c) Any claims, liabilities or damages arising out of any interference with or infringement of the rights of any Indemnified Persons or any third party in connection with or as a result of Customer's use of the Co-location Services hereunder, including those the use or possession of the Equipment or any computer programs used in connection with the Equipment infringes the intellectual property rights of any third party or causes interference with the equipment of any third party; and
- (d) all reasonable repair or restoration costs associated with damage or destruction in the Co-location Space and the Premises caused by the negligence or willful misconduct of the Customer or the Customer's personnel, the Customer's agents, the Customer's suppliers/contractors, or the Customer's visitors to the Co-location Space or as a consequence of the installation and/or removal of the Equipment or property installed in the Co-location Space provided that the Customer shall not be liable for any damage or destruction occurring solely from or out of any negligent act or omission of HGC, its officers, directors, agents and employees.

**8. ASSIGNMENT**

This Agreement is personal to the Parties hereto and may not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld except that HGC shall have the right to assign its rights and obligations hereunder without consent to an affiliate by providing reasonable written notice to the Customer. It is also understood and agreed that the rights and obligations of HGC hereunder may be transferred and/or assigned as necessary to such licensed and authorized affiliates as HGC deems appropriate for regulatory, legal, or financial purposes and the parties shall in good faith negotiate any amendments to this Agreement which may become necessary as a result of such transfer or assignment.

**9. FORCE MAJEURE**

No failure or omission by HGC to carry out or observe any of the terms and conditions of this Agreement, except for payment obligations, shall give rise to any claim against the party in question or be deemed a breach of this Agreement if such failure or omission arises from an act of God or any other force majeure, an act of Government, or any other cause beyond the reasonable control of that party.

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**10. PUBLICITY, CONFIDENTIALITY**

10.1 For a period of two (2) years from the date of disclosure thereof, each Party shall maintain the confidentiality of all information or data of any nature (“Information”) provided to it by the other Party hereto provided such Information contains a conspicuous marking identifying it as “Confidential” or “Proprietary”. Each Party shall use the same efforts (but in no case less than reasonable efforts) to protect Information it receives hereunder as it accords to its own Information. The above requirements shall not apply to Information which is already in the possession of the receiving party through no breach of an obligation of confidentiality to the disclosing party or any third party, is already publicly available through no breach of this Clause, or has been previously independently developed by the receiving party. This Agreement shall not prevent any disclosure of Information pursuant to applicable law or regulation, provided that prior to making such disclosure, the receiving party shall use reasonable efforts to notify the disclosing party of this required disclosure.

10.2 The provision by HGC of the Co-location Service in no way grants to the Customer any title or ownership in intellectual property which may be included or embodied therein, it being understood that such intellectual property shall at all times remain the exclusive property of HGC.

**11. NOTICES**

All notices, requests, or other communications hereunder shall be in writing, by mail or by fax, addressed to the Parties at the addresses and numbers set forth in the Order Form. Notices mailed by registered or certified mail shall be conclusively deemed to have been received by the addressee on the fifth business day following the mailing or sending thereof. Notices sent by telex or fax shall be conclusively deemed to have been received when the delivery confirmation is received. If either Party wishes to alter the address to which communications to it are sent, it may do so by providing the new address, in writing, to the other party.

**12. COMPLIANCE WITH LAWS**

The Customer represents and covenants that it shall not use the Co-location Service in any manner or for any purpose which constitutes a violation of the laws or regulations of Hong Kong or any agency thereof or any foreign jurisdiction in which the Co-location Service are being provided. The Customer shall indemnify HGC against any violation of the terms of this Clause 12.

**13. MISCELLANEOUS**

13.1 Any Clause or any other provision of this Agreement

which is, or becomes, illegal, invalid or unenforceable shall be severed herefrom and shall be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof, which provisions shall be severed from any illegal, invalid or unenforceable Clause or any other provision of this Agreement and otherwise remain in full force and effect.

13.2 No waiver by either Party to any provisions of this Agreement shall be binding unless made expressly and confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

13.3 The relationship between and among the Parties hereto shall not be that of partners and nothing herein contained shall be deemed to constitute a partnership between and among them, or a merger of their assets, or their fiscal or other liabilities or undertakings. Neither Party shall have the right to bind the other Party except as expressly provided for herein.

13.4 This Agreement shall be governed by the laws of Hong Kong without reference to its principles of conflict of laws. The Customer irrevocably consents and submits to personal jurisdiction in the courts of Hong Kong for all causes arising under this Agreement.

13.5 In any action brought by HGC against the Customer to enforce any of the provisions of the Agreement, HGC shall be entitled to reimbursement from the Customer for all collection and enforcement costs, including without limitation, attorneys’ fees.

13.6 This Agreement represents the entire understanding between the Parties in relation to the matters dealt with herein and supersedes all previous covenants and representations made between the Parties in relation to the Agreement, whether oral or written. This Agreement may only be modified if such modification is in writing and signed by a duly authorized representative of each Party hereto. The Agreement may be executed by facsimile and the facsimile executive pages will be binding upon the executing party to the same extent as the original executed pages. The executing party shall provide original of the facsimile execution pages for insertion into the agreement in place of the facsimile pages.

13.7 Clauses 6, 7, 10, 11 and 13 shall survive the termination of this Agreement.

13.8 The Chinese version hereof is for reference only. In the event of a conflict between this English version and the Chinese version, this English version shall prevail.

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