

Special Terms and Conditions of Data Centre Service (also known as “Special Terms and Conditions of Internet Data Centre”)

1 Service

In consideration of the payment of the Charges paid by Customer, HKBN Enterprise Solutions Limited (HKBNES”), hereby grants Customer with a non-exclusive access to the Colocation Space (defined herein) within certain Site, in which Customer may co-locate, install and operate their equipment in accordance with the General Terms and Conditions, the terms and conditions herein and the terms and conditions in the Service Form(s). Unless otherwise provided, terms used herein shall bear the same meanings as per the General Terms and Conditions of HKBNES. The Service is provided on an “as available” and unless otherwise specified in the Service Form, on an “as-is” basis. Customer’s equipment must comply with the Equipment Criteria set forth in Clause 5 hereof.

2 Definitions

Unless otherwise defined, terms and expressions used in the Agreement shall have the following meaning:

“Access Terms” means the terms and conditions governing the physical access to the corresponding Site by Customer.

“Agreement” shall have the same meaning as specified in the General Terms and Conditions of HKBNES.

“Customer” means any person including any individual, corporation or unincorporated body who apply for or use any of the Service or to whom HKBNES has agreed to provide Service and includes the Subscriber as specified in the Service Form.

“Service Form” means any registration form signed by any Customer for the subscription of Service, any service form issued by the Customer to HKBNES for the delivery of Service, any quotation or agreement signed by the Customer and returned to HKBNES and includes the registration form for the facility management services.

“Allocated Power” means, with respect to the Service, all electrical power specified in the Service Form that is allocated, on a per rack/cabinet basis (or portion thereof), to the Colocation Space.

“Colocation Space” means the specific space within a Site including, without limitation, racks, cabinets, cubicles, cages, certain area in the staging rooms, whether or not specified in the Service Form, at which Customer may place its equipment under the Agreement.

“Commencement Date” shall have the same meaning as specified in the General Terms and Conditions. For avoidance of doubt, this corresponds to the date on which HKBNES has completed the installation of Colocation Space and the required Facilities (e.g. racks, electricity, cages etc. if applicable) and so that they are ready for the installation of the Customer Equipment.

“Facility” means the facilities such as electricity, cooling, security facility etc. that for the operation of the Customer Equipment in the Site.

“General Terms and Conditions” means the general terms and conditions of HKBNES (available at HKBNESes.net/tnc/T&C_Eng.pdf).

“Service” means the equipment hosting service at the Colocation Space or the Site, the provision of Facilities, the facility management service, iData centre service, and any other equipment hosting or facility management service provided by HKBNES (whether through any third party service provider), relevant installation services and maintenance services, and any other services specified in the Service Form.

“Charges” shall have the same meaning as specified in the General Terms and Conditions, and shall include the fees and charges specified in the Service Form.

“Site” means the premises as specified by HKBNES from time to time, including but not limited to any data center, the point-of-presence (“POP”) facility, hub sites, or any premises as specified in the Service Form.

“Customer Equipment” means equipment of and/or provided by the Customer.

3 Term and Termination

3.1 Subject to Clauses 3.2 and 3.2A below and Clause 6.4 of General Terms and Conditions, the term of this Agreement shall be for the contract period specified in the Service Form from the Commencement Date, or if no such period is specified, the period of 6 months (hereinafter referred as "Minimum Service Period"). Notice to terminate this Agreement may be given by Customer for termination after expiry of the Minimum Service Period. Any such notice must be made in writing thirty (30) days in advance of the termination date. Termination of this Agreement by Customer prior to expiry of the Minimum Service Period will incur Cancellation Charges as set out in the Agreement or schedules which apply thereto. Such Cancellation Charges, as agreed by the parties hereto as liquidated damages for compensating the loss of HKBNES as a result of such early termination, Customer shall still be liable to pay all other charges due.

3.2 Notwithstanding any other provision of this Agreement, HKBNES may, without prejudice to its other rights and remedies hereunder or at law, terminate this Agreement forthwith at any time by serving to Customer

- a written notice and without any compensation to Customer if :-
- 3.2.1 Customer is in breach of any material obligation under this Agreement and such breach is not of a nature which is capable of being remedied or rectified; or
 - 3.2.2 save for the case of Clause 3.2.1 above, Customer is in breach of any obligation under this Agreement, including the Access Terms, and fails to remedy the same within seven (7) calendar days after receipt of written notice of the breach and requiring that the breach be remedied; or
 - 3.2.3 Customer goes into liquidation, bankruptcy or receivership or analogous proceedings taken in any jurisdiction having the foregoing effect; or
 - 3.2.4 any notice is given by the Government or any competent authority to the effect that the Customer Equipment or any part of it is required to be removed from or substantially rearranged in the Colocation Space on the ground that the Customer Equipment or any part of it constitutes illegal structure or breaches other laws or regulations.
- 3.2A In addition to the above Clause 3.2, HKBNES shall have the right to terminate this Agreement at any time without compensation by serving Customer at least two(2) months' prior written notice.
- 3.3 On termination of this Agreement for whatever reasons, all sums due or which may become due to HKBNES from Customer whether or not they have been billed by HKBNES shall immediately become due and payable including any charges that may be incurred in the period of notice prior to termination.
- 3.4 At the date of termination of this Agreement, Customer shall:
- 3.4.1 within fifteen (15) days deliver to HKBNES vacant possession of the Colocation Space and restore the Colocation Space and the relevant facility to the condition in which it was delivered to Customer at the commencement of this Agreement (except fair wear and tear);
 - 3.4.2 pay to HKBNES all monies due and owing to HKBNES accrued up to and including the date of termination;
 - 3.4.3 remove or relocate all the international private leased circuit(s) or other telecommunication links installed in the Site or otherwise terminating at the Colocation Space which was ordered by Customer; and
 - 3.4.4 remove or relocate the Customer Equipment or any other property of Customer installed at the Colocation Space. If Customer for whatever reasons(s) fails to remove or relocate such Customer Equipment and/or property, HKBNES shall have the right either to dispose of or return the same to Customer at discretion of HKBNES and at the cost of Customer, in any case without any liability to Customer. HKBNES shall give Customer no less than seven (7) days written notice prior to disposing or returning of any equipment and/or property owned by Customer. This Clause 3.4.4 shall be subject to and without prejudice to the operation of Clause 10.7.
- This Clause 3.4 shall survive, and shall remain in full force after termination or expiry of this Agreement.
- 3.5 HKBNES reserves the right to forthwith suspend and/or terminate all or part of the Service without notice and compensation to Customer upon receipt of any complaint against Customer for infringement of intellectual property rights, or violation of duty or obligation in contract, tort or otherwise, to any third party arising out of or in connection with the use of the Service.
- 4 Delivery, Installation, Maintenance and Access
- 4.1 Customer must advise HKBNES of the delivery of Customer Equipment at least two (2) working days in advance of its arrival at the Site. An authorized representative of the Customer must be present at the Site to accept all Customer Equipment delivery. Customer shall be responsible for (a) arranging shipment and paying all the associated costs incurred in the shipment of the Customer Equipment to the Site; (b) obtaining all necessary governmental authorization or clearances for the Customer Equipment, including the payment of all taxes or duties imposed on the Customer Equipment; and (c) paying for all penalties and/or other charges and/or fees resulting from Customer's failure to comply with (a) or (b) above.
 - 4.2 Customer must provide HKBNES with all necessary Customer Equipment delivery information upon request.
 - 4.3 HKBNES may agree to receive Customer Equipment on Customer's behalf, on an "as-is" basis and only upon advance written arrangement and notification. It is Customer's sole responsibility (a) to check and inspect Customer Equipment and (b) to obtain all clearances from governmental authorities of the Customer Equipment and pay all taxes (include duties and fees) that may be imposed on the Customer Equipment and Customer agrees to indemnify HKBNES against any and all such taxes payable.
 - 4.4 In any case, HKBNES will not be held liable or responsible for any damage, loss, cost, action, claim, or demand arising from or in connection with the Customer Equipment co-located in the Site or received by HKBNES on Customer's behalf, and Customer agrees to indemnify HKBNES against any losses, damages or claims HKBNES may suffer or incur as a result thereof.

- 4.5 HKBNES reserves its right to reject delivery of the Customer Equipment if Customer fails to comply with Clauses 4.1, 4.2 and/or 4.3 above.
- 4.6 Unless otherwise provided in the Service Form, Customer is solely responsible for installation and maintenance of Customer Equipment, subject to a schedule mutually agreed with HKBNES and the Access Terms applicable at the relevant Site. HKBNES is only responsible for maintenance of the Facility and the Colocation Space.
- 4.7 All Customer Equipment must be placed within the Colocation Space (or removed from Site) within five (5) business days upon delivery. HKBNES may impose additional Charges for temporary storage of Customer Equipment that remains uninstalled for a period longer than five (5) business days. Uninstalled Customer Equipment at the Site will remain Customer's responsibility and will be stored at the Site at Customer's own risk. Unless otherwise agreed in writing, uninstalled Customer Equipment that remains in the Site but outside a Colocation Space for thirty (30) days or more will be considered to be abandoned by Customer, HKBNES may but is not obliged to dispose of such equipment at the cost of Customer without any liability to Customer.
- 4.8 Customer will have access to the Colocation Space, subject to prior appointment with HKBNES and giving HKBNES reasonable advance written notice and otherwise complying with Access Terms applicable at the corresponding Site.
- 4.9 If Customer authorizes a third party for installation or maintenance of equipment, Customer shall notify HKBNES in writing in advance of the details of such authorized third party, HKBNES may then grant access to such third party, to the same extent as Customer is entitled to access.
- 5 Equipment Criteria
 - 5.1 Except where otherwise specified on the Service Form, Customer shall ensure that all Customer Equipment(s) installed in the Colocation Space complies with following criteria:
 - 5.1.1 Telecommunication lines must be extended from an organized and protected distribution frame;
 - 5.1.2 Spare Customer Equipment must be kept within the confines of the Colocation Space;
 - 5.1.3 AC and DC power distribution must take place within the racks in the Colocation Space;
 - 5.1.4 Customer Equipment must include all necessary fans and ventilation;
 - 5.1.5 Customer Equipment density must be consistent with Allocated Power;
 - 5.1.6 Customer Equipment density must be consistent with floor loading at the Facility;
 - 5.1.7 Grounding facilities must be included;
 - 5.1.8 All cable must be tied and harnessed in an orderly fashion;
 - 5.1.9 All Customer Equipment must be suitably labeled as belonging to Customer, including any safety notices and instructions and contacts for emergency repairs;
 - 5.1.10 All associated records and documents must be available for safe storage in the Colocation Space, and Customer must separately maintain a complete set of such information at its premises;
 - 5.1.11 AC Uninterrupted Power Supply equipment must not be installed in the Colocation Space;
 - 5.1.12 All Customer Equipment must not cause any harm or danger to human or the Site;
 - 5.1.13 All Customer Equipment must comply with applicable laws, rules and regulations in Hong Kong.
- 6 Power
 - 6.1 HKBNES shall provide Customer with Allocated Power for the Colocation Space at the limit set forth in the Service Form. Subject to availability of power at the Site, Customer may order additional power in increments of one (1) whole kVA or two and a half (2.5) Ampere with applicable Charges.
 - 6.2 Customer shall, at all times, ensure that its actual power utilization does not exceed the Allocated Power. If Customer's power utilization exceeds the Allocated Power, then HKBNES shall be entitled to exercise one or more options as follows at its discretion (with or without notice): suspending installation of additional equipment, disconnecting power to the relevant Colocation Space, notifying Customer to remove the Customer Equipment installed at the Colocation Space, or imposing additional charges on Customer, or any other options as HKBNES deems appropriate.
 - 6.3 If HKBNES is of the view that Customer's overdraw of power endangers the equipment of HKBNES or of any other HKBNES' customer(s) or the health or security of any person, or Customer has overdrawn power on more than one occasions, HKBNES shall be, in addition to any other rights it may have including but not limited to those under these Special Terms and Conditions, entitled to terminate the Agreement in accordance with Clause 3 immediately by written notice on the ground of material breach and such material breach shall be deemed to be irremediable.
 - 6.4 Should HKBNES discover improper use of power bars by Customer, HKBNES shall be entitled to require Customer to immediately remove such unauthorised and/or inappropriately extended power supply, and / or to take corrective actions within a time period decided by HKBNES. If Customer fails to act according

to such requirements, HKBNES shall be entitled to take all necessary corrective actions and/or removal works ("corrective / removal works") without further notice. In such circumstances, HKBNES may charge Customer for the charges and expenses in relation to the corrective / removal works. HKBNES shall not be liable for any losses or damages caused to Customer, Customer Equipment and / or property of Customer as a result of the corrective / removal works. In addition, HKBNES shall be entitled to charge Customer an administration charges of HK\$1,000 per rack, Full Cabinet (including Normal Full Cabinet and High Power Full Cabinet), Half Cabinet, and/or Quarter Cabinet (as the case maybe) on a monthly basis from the date of discovery of such improper use until the completion of the corrective / removal works. Part of a month shall be deemed to be one month for the purpose of calculation of the administration charges.

7 Other Covenants and Obligations of Customer

7.1 Customer covenants not to:

- 7.1.1 use the Colocation Space for any purpose other than those related to information and communication technology use;
- 7.1.2 place and house any system or equipment or Customer Equipment, other than related to information and communication technology use;
- 7.1.3 make any alteration to the Colocation Space (including fixtures, partitions or fittings), alter existing, or install new locks, bolts and fittings on the entrance door to the Colocation Space or the Site, without the HKBNES' prior written approval ;
- 7.1.4 install or place any equipment in the Colocation Space which would in the opinion of HKBNES overload the structure of any part of the Site;
- 7.1.5 extend or increase electrical wiring in the Colocation Space without HKBNES' prior written approval;
- 7.1.6 do or permit to be done anything which will breach the terms, conditions or other covenants.

7.2 Customer shall:

- 7.2.1 pay to HKBNES the applicable Charges as set out in Clause 10 hereof;
- 7.2.2 from the Commencement Date, and thereafter maintain throughout the duration of this Agreement, for the benefit of and in the joint names of HKBNES and Customer, adequate insurance cover, and upon HKBNES' request, produce the copies of certificates of insurance evidencing Customer's compliance with this clause;
- 7.2.3 keep the Customer Equipment in good condition and to keep the Colocation Space in a safe and clean condition;
- 7.2.4 send its employee(s) or agent(s) to the Site to accept delivery or acknowledge receipt of the Customer Equipment or any part thereof or any other items, which Customer intends to deliver and install in the Colocation Space;
- 7.2.5 take appropriate corrective action in respect of the Customer Equipment;
- 7.2.6 ensure that the Customer Equipment does not damage, interfere with or cause deterioration to the operation of other equipment or Facilities in the Site;
- 7.2.7 ensure that the Customer Equipment does not endanger the safety or health of the officers, employees, contractors or other customers;
- 7.2.8 give 60 days notice in writing to HKBNES in requesting racks for the Customer Equipment; and
- 7.2.9 take such other action as a prudent operator of the Customer Equipment would take.

7.3 Customer acknowledges that it has been granted a bare license only to occupy Colocation Space and that it has not been granted any real property interests in the same. Payments by Customer under this Agreement do not create and shall not create or vest in Customer (or in other person) any leased estate, easement, ownership interest, or other property right or interest of any nature in Colocation Space or any part of the Site.

8 Corrective Works by Customer

- 8.1 If HKBNES is of the opinion that the Customer Equipment located in the Colocation Space is in violation of any Equipment Criteria, or adversely affecting HKBNES 's or any third person's network or operating requirements, HKBNES shall notify Customer of such conditions and on receiving such notification, Customer shall take the necessary corrective action for the Customer Equipment (including but not limited to reinstallation, repair, maintenance or cleaning up);
- 8.2 If Customer fails to perform or complete the corrective work as aforesaid, or if HKBNES is of the opinion that the Customer Equipment poses an immediate risk of personal injury or significant disruption to HKBNES' network or other equipment or another third party's network or equipment, HKBNES may, at Customer's costs, take such corrective action as HKBNES may deem necessary.

9 Liability and Indemnity

- 9.1 HKBNES in performing any obligation under this Agreement is only required to exercise reasonable care and skill of a competent telecommunications service provider.
- 9.2 HKBNES shall not be liable to Customer or any other third party, under this Agreement in contract, tort (including negligence) or otherwise in any respect, for any direct, indirect or consequential loss or damage whatsoever. For avoidance of doubt, HKBNES shall not be liable for any loss of data, loss of profit, loss of business opportunity, loss of goodwill or other indirect or consequential loss, arising from the use, or delay in delivery, of any Service.
- 9.3 HKBNES is not responsible for work carried out or supervised by third parties engaged by Customer.
- 9.4 HKBNES reserves the right to relocate HKBNES' equipment and Customer's equipment within the Colocation Space or the Site, to move Customer's equipment to another area or change the configuration of the Colocation Space with at least 30 days' notice.
- 9.5 For the purposes of this Agreement, all acts or omissions of Customer's directors, officers, employees, agents, contractors, servants, affiliates, subsidiaries, and representatives shall be deemed to be the acts or omissions of Customer.
- 9.6 Customer shall indemnify and keep HKBNES indemnified against any or all claims, costs or actions by third parties arising out of or in connection with this Agreement.
- 9.7 Customer shall indemnify and keep HKBNES indemnified against all claims, demands, damages, proceedings, costs and expenses due to Customer and/or its employees, contractors, servants and agents' negligence or arising out of the installation, operation and maintenance of the Customer Equipment in the Colocation Space, the dismantling or removal of the Customer Equipment, any breach of this Agreement by Customer.

10 Charges and Payment

- 10.1 Unless otherwise agreed by HKBNES in writing, Customer must pay the Charges in the following manner:
 - 10.1.1 one-time set-up charges shall be payable upon completion of installation of the Colocation Space;
 - 10.1.2 Other Charges, including but are not limited to monthly service charges, additional electricity charges, additional remote hand charges shall be payable at the beginning of each billing cycle.
- 10.2 Customer must pay the charges stated on each invoice issued by HKBNES.
- 10.3 If HKBNES makes a change to the Charges, service charges or rates, Customer will be notified at least 28 days before the change is due to take place.
- 10.4 All charges for services are exclusive of any applicable taxes, tariffs, surcharges, duties or such other like amounts assessed by any governmental entity. If it is applicable, it will be added to each invoice.
- 10.5 All sums due to HKBNES under this Agreement shall be payable by Customer within thirty (30) days of the date of the relevant invoice. If Customer fails to make payment within such period, HKBNES shall, without prejudice to its other rights hereunder or at law, have the right to require Customer to pay on demand all sums due or which may become due to HKBNES from Customer whether or not they have been billed by HKBNES.
- 10.6 Time of payment of all sums due to HKBNES under this Agreement shall be of the essence. Late payment shall incur interest on the full outstanding amount of the applicable invoice at the rate of (i) 1.5% per month or (ii) 4% per annum above the Hong Kong & Shanghai Banking Corporation best lending rate as current, whichever the higher, whether before or after judgment from the due date until it is fully paid. Interest shall continue to accrue notwithstanding termination of this Agreement for any cause whatsoever.
- 10.7 In the event that Customer fails to pay HKBNES all undisputed amounts owed to HKBNES under this Agreement, when due, Customer agrees that, HKBNES may restrict Customer's physical access to the Colocation Space and Customer Equipment, and/or take possession of any of Customer Equipment and dispose of the same, all without being liable to prosecution of for damages and without any liability to Customer. This Clause 10.7 shall survive the termination of the Agreement.
- 10.8 HKBNES reserves the right to charge for administrative and legal costs incurred in pursuing late payments.

11 Non-Exclusive Licence & Right of Way

- 11.1 Nothing in this Agreement shall in any way create or constitute a lease or tenancy whatsoever or grant to or create in favour of Customer or any person any right or interest (including, without limitation, exclusive possession) other than a non-exclusive licence or a right of way. The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) shall not apply to this Agreement or to the licence or right of way granted hereunder.
- 11.2 Nothing in this Agreement shall be taken to mean or have the effect of or imply that HKBNES has granted to Customer any exclusive right to install, commission, operate or maintain the Customer Equipment at or occupy the Colocation Space.

12 Acceptable Use Policy

- 12.1 In addition to Customer's obligations under the Agreement, Customer must comply with HKBNES'

Acceptable Use Policy (“AUP”) for all Services. HKBNES may revise or modify the AUP at any time and from time-to-time. HKBNES’ current AUP may be found at which is available at <http://www.hkbn.net/new/pdf/U0045-003-FEB2016-N.pdf>.