

# HKBN ENTERPRISE SOLUTIONS HK LIMITED

## GENERAL TERMS AND CONDITIONS OF SERVICE

### 1 Application

This document details the terms and conditions for the provision of Services by HKBNES. The Customer is deemed to have accepted the Conditions and the relevant Tariffs when applying for the Services.

### 2 Definitions and Interpretation

2.1 Unless the context says otherwise:

"Application" means a request for Services made by the Customer which may be oral or written by completing a relevant HKBNES service order form.

"CA" means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616) or its successor.

"Conditions" means the terms and conditions in this document namely clauses 1 to 16 (both inclusive).

"Contract" means the agreement between the Customer and HKBNES for the provision of Services comprising these Conditions, the Tariff, the Application and any policies or user guides issued and revised by HKBNES from time to time.

"Customer" means any person, firm or entity (a) which has applied for a Service; (b) which has used the Service, but has not applied for that Service; or (c) as stated in the Application.

"Directory Number" means the telephone number assigned to the Customer.

"Equipment" means equipment (including software relating thereto) which is provided by HKBNES for the provision of a Service to the Customer and which is installed at the Customer's premises, excluding the Customer's equipment or third party equipment.

"HKBNES" means HKBN Enterprise Solutions HK Limited (formerly known as WTT HK Limited) and includes any of its successors, transferees or assignees.

"Hong Kong" has the meaning ascribed to that term in the Interpretation and General Clauses Ordinance (Cap.1).

"Licence" means the Unified Carrier Licence issued to HKBNES and includes any replacement of it.

"Network" means the network established, maintained and/or operated by HKBNES in accordance with the Licence.

"Ordinance" means the Telecommunications Ordinance (Cap.106) and includes any replacement of or amendment to it.

"PIN" means a Personal Identification Number.

"Services" or "Service" means any services offered by HKBNES to the Customer.

"Special Conditions" means the special terms and conditions (if any) set out in the Tariff or the Application which are applicable to the Services.

"Tariff" in respect of a Service means the description of the Service, the charges and any Special Conditions, as amended and published by HKBNES from time to time.

2.2 Unless the context says otherwise:

(a) A reference to a clause is a reference to a clause of these Conditions.

(b) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

(c) The singular includes the plural and conversely.

(d) Headings to clauses are used for convenience of reference only and do not form a part of the clauses.

(e) If there is a conflict between the Conditions and the Tariff (excluding the Special Conditions) the Conditions will prevail to the extent of the conflict. If there is a

conflict between the Conditions and the Special Conditions then the Special Conditions will prevail to the extent of the conflict.

(f) Any correspondence which is required to be given in writing can be given by prepaid post or facsimile transmission.

(g) A reference to a "day" refers to a calendar day.

### 3 Provision of Services

3.1 Where HKBNES has accepted an Application from the Customer, HKBNES will provide the Services subject to the terms of the Contract.

3.2 HKBNES will endeavour to provide the Services subscribed by the Customer within a reasonable time or a time agreed with the Customer.

3.3 HKBNES does not guarantee continuous provision of or fault free Services or performance at a particular speed, bandwidth or data throughput rate. In the event of a fault in the Service, the Customer shall immediately notify HKBNES. HKBNES will determine the appropriate methods for providing the Services and the route along which a Service is delivered to the Customer. HKBNES may change the method and delivery route from time to time without informing the Customer.

3.4 The provision of a Service to the Customer is subject to the Customer providing such information as may be reasonably requested by HKBNES and which meets HKBNES's credit policy requirements.

3.5 HKBNES will repair faults that occur on a date agreed with the Customer unless otherwise provided, or if the Customer has entered into an alternative maintenance arrangement with HKBNES. In some cases a temporary repair may be performed to enable the Customer to use the Service before permanent repair is effected.

3.6 For Internet and data connectivity Service, the access speed specified for each circuit or access port is the maximum data transfer capacity or throughput (measured in bits per second) that HKBNES has configured the circuit or access port for. For Internet access Service above 20Mbps, throughput limits apply. International Internet access is 20Mbps maximum. In any case actual access speed will be affected by Customer's usage levels, network line condition, network configuration, resource availability and extraneous factors.

### 4 Use of Services

4.1 The Customer shall use the Services in accordance with the terms and conditions of the Contract.

4.2 Subject to the Contract, the Customer may allow any person to use the Service provided that the Customer will remain liable to HKBNES for all charges incurred thereby and for any and all liabilities or obligations arising under the Contract. The Customer shall be liable for all charges incurred through the use of the Service whether such charges were incurred with or without the consent of the Customer.

4.3 If the Customer vacates the premises at which the Service is provided without cancelling the Service, the Customer will be liable for any charges outstanding in respect of the use of the Services and any charges

incurred in respect of the Services by any person who commences occupation of the premises or remains in occupation after the Customer has vacated the premises, or by any other person whom such person permits to use the Services.

4.4 The Customer must not use or permit another person to use the Service:

- (a) in connection with, or in, the commission of an offence against the laws of Hong Kong or other applicable laws;
- (b) for the purposes of resale or sublease of the Service, unless otherwise agreed by HKBNES in writing;
- (c) in any manner which infringes any rights (including intellectual property rights) of any third party;
- (d) for the purpose of sending large volume of advertising material or message;
- (e) in any manner which interferes with, impedes or impairs the use or operation of, or do anything likely to interfere with, impede or impair the use or operation of the Network or Services; or
- (f) for purposes not authorised by HKBNES.

4.5 The Customer must:

- (a) comply with any written notice from HKBNES in relation to the modifications of any apparatus including machinery, engines, meters, lamps, transformers or fittings ("apparatus"), or other action to be taken, to eliminate the interference, impedance or impairment or the likelihood of the interference, impedance or impairment;
- (b) permit or obtain the necessary permission to enable HKBNES's employees or agents to enter any premises to inspect any apparatus, which is, or may be, causing or likely to cause, any interference or damage to the Network; and
- (c) provide HKBNES with prior and sufficient advance notice in the case where the Customer uses or intends to use the Service at any time for the purpose of receiving or delivering relatively high volume of telecommunications traffic, or otherwise in order to eliminate the interference, impedance or impairment or the likelihood of interference, impedance or impairment to the Service or the Network.

4.6 If non-effective access to the Service is caused by or due to the Customer's usage behaviour and interferes with the efficiency or integrity of the Network, HKBNES may require the Customer to take such action as required by HKBNES and if the Customer does not comply with the requirement, HKBNES may discontinue the provision of the Service to the Customer without further notice to the Customer.

4.7 Other than to the extent that the losses or damages are contributed by HKBNES, the Customer shall indemnify and hold harmless HKBNES, its employees and agents against all claims, liability, losses or damages which HKBNES suffers or incurs as a result of:

- (a) any acts or omissions of the Customer;
- (b) any claims by any person relating to the use of the Service, or its resupply, by the Customer;
- (c) a breach by the Customer of the Contract;
- (d) any illegal or unauthorised activity by the Customer;
- (e) any claims by any person in relation to the use of the Service by the Customer (including any claims for infringement of any intellectual property rights or any claims arising out of or relating to carrying material of obscene, indecent or defamatory nature); and

(f) any injury or damage to property suffered by HKBNES in the course of access to the Customer's designated premises for the purpose of supply of the Service.

## **5 Numbers**

5.1 Subject to the Ordinance, the Licence and numbering plans, codes of practice and guidelines issued by the CA, HKBNES may assign a Directory Number and/or PIN to the Customer and may withdraw or vary the numbers so assigned at any time. The Customer shall have no title, goodwill or interest in any Directory Number. Upon termination or cancellation of the Service and unless otherwise determined by HKBNES, the Directory Number assigned to the Customer in connection with the Service shall automatically be relinquished and HKBNES may reassign such number.

5.2 The Customer is responsible for the security of any unpublished Directory Number and PIN. HKBNES will not be liable for any loss or damage sustained by the Customer by reason of any disclosure of an unpublished Directory Number and PIN.

5.3 HKBNES may impose a subscriber number fee or any other related or similar fees in addition to the charges for the Services.

## **6 Access to Premises**

6.1 The Customer must allow or obtain the required permission to enable HKBNES's employees or agents to enter at all reasonable times into the premises where the Services will be provided to inspect, test, install, maintain, replace and remove the Services or Equipment prior to, during and after the provision of the Services, as well as to inspect any other equipment used in or in connection with the Services. The Customer will provide safe access to the premises and safe conditions for HKBNES's employees or agents whilst in the premises.

6.2 Provision of Services is subject to HKBNES gaining access to the building and the Customer's premises to install the necessary facilities including equipment and wiring and in some situation access to the use of any in-situ wires in the Customer's building or premises. The Customer will provide necessary assistance to facilitate such access including: (a) liaising with the respective Building Management Office (BMO), data centre operator or relevant authority, and settling cross connection charge or any surcharges that may be imposed (one-off and monthly recurring); and (b) where internal wiring work is required, to remove and reinstate any interior furnishings that may be affected; provide necessary tools such as construction platform and seeking permission to drill holes. HKBNES may cancel the Application without any liability to the Customer if access is denied or necessary arrangement(s) are not made or it is not technically or commercially feasible to install the required facilities to provide the Services.

## **7 Equipment**

7.1 HKBNES will endeavour to deliver and install such Equipment as agreed with the Customer to the agreed installation site on the date determined by HKBNES or agreed with the Customer. The title to the Equipment delivered and/or installed shall remain with HKBNES and the risk of loss or damage shall be borne by the Customer.

7.2 The Customer must:

- (a) provide a suitable place for the Equipment to be installed;
- (b) provide proper and adequate lighting, air-conditioning, fire protection, approved power supply, approved wiring and any other special requirements as informed by HKBNES;
- (c) obtain any consents required for the installation and connection of the Equipment;
- (d) provide safe conditions for the installation of the Equipment;
- (e) not misuse the Equipment and will follow any directions from HKBNES and the manufacturer regarding the use of the Equipment;
- (f) leave the Equipment where it was installed and never interfere with the Equipment or any identifying marks or numbers on it unless authorised in writing by HKBNES;
- (g) protect the Equipment from radio or electrical interference, abnormal environmental conditions and any other risks; and
- (h) not use or allow others to use the Equipment for any purpose other than that for which the Equipment was provided.

7.3 (a) Any equipment which the Customer intends to connect to the Network must:

- (i) be approved by HKBNES in writing prior to any connection, and
  - (ii) comply with the technical standards as advised by HKBNES from time to time.
- (b) At the time of application for any Services the Customer must provide all details regarding the equipment which it intends to connect to the Network. HKBNES may reject the application if the required information is not provided or in HKBNES's reasonable view, the equipment does not comply with HKBNES's technical standards.
- (c) HKBNES may at any time disconnect the Customer's equipment connected to the Network if:
- (i) the equipment so connected is different from the details provided by the Customer;
  - (ii) there is any malfunction of the equipment; or
  - (iii) the Services to the Customer are terminated or discontinued for whatever reason.

7.4 For the sale and rental of Equipment, the following conditions shall apply:

- (a) Equipment is for the sole use of the Customer and in connection with the Service. The Equipment is not for resale or for use with other services or products.
- (b) Equipment sold (excluding consumables) will be warranted to be free from defect in workmanship and material under normal use and service for a period of 90 days from the date of purchase ("Warranty"). During the warranty period, HKBNES will at its own option and cost replace and repair the Equipment or any parts of the Equipment except replacements and repairs caused by any of the events set out in paragraph (d).
- (c) During the rental period of Equipment, HKBNES will at its own option and cost replace and repair the Equipment or any parts of the Equipment except replacements and repairs caused by any of the events set out in paragraph (d).
- (d) HKBNES does not have any obligations to replace or repair any Equipment caused by: accident, negligence or improper use; modification, repair or alteration not authorised by HKBNES; removal or relocation of

Equipment without the approval of HKBNES; or non-compliance of the environmental conditions for the installation of the Equipment.

(e) HKBNES has the right to terminate the rental or applicable Warranty if:

- (i) any alteration, modification or repair is made to the Equipment without the authorisation of HKBNES;
  - (ii) the Equipment has been used in connection with any parts not approved by HKBNES;
  - (iii) the serial number on the Equipment has been removed, defaced or altered; or
  - (iv) the Equipment is re-sold or transferred by the Customer without the written approval of HKBNES.
- (f) HKBNES shall be entitled to charge the Customer repair or replacement cost and other testing or handling charges in respect of the Equipment or any part of the Equipment not covered by the Warranty.
- (g) Risk of loss or damage to the Equipment shall pass to the Customer on installation. For sale of Equipment, title in the said Equipment shall not pass until full payment of the purchase price is received by HKBNES. Title shall not pass for Equipment on rental.
- (h) The Customer shall provide suitable environment as instructed by HKBNES for installation of the Equipment.
- (i) On termination or expiration of the rental period the Customer shall permit HKBNES to access the premises where the Equipment is installed to remove the Equipment.
- (j) On expiration of the rental period, the Equipment on rental shall continue on a monthly basis until otherwise terminated by either party by giving to the other no less than 30 days' written notice or otherwise extended.

## **8 Charges for Services and Payments**

8.1 All charges for Services will be as specified in the Application or the Tariff. HKBNES may amend any charges in the Tariff and may not necessarily inform the Customer prior to effecting any changes to the Tariff.

8.2 The Customer shall pay HKBNES the full amount of the charges for Services as specified in the statement from HKBNES without deduction or set-off. Charges for Services are exclusive of any applicable taxes, withholdings of any kind, surcharges, duties or other similar charges assessed or imposed by any competent governmental authority on, or in relation to the Service ("Taxes") or any electricity charges or any third party charges. In addition to all other charges and amounts payable under the Contract, the Customer shall be solely responsible for payment of any Taxes. The Customer shall not deduct any Taxes from the charges payable to HKBNES. Electricity charges will be calculated according to HKBNES's records and will be subject to upward adjustment from time to time according to rates published by electricity supplier.

8.3 Charges are payable from the date when the Service is ready for operation or connected except for charges which are based on usage. All periodical and rental charges are payable in advance.

8.4 Charges payable based on usage will be calculated by reference to the details of such usage as are recorded by HKBNES.

8.5 Where services of a third party is accessed using the Service, the Customer shall pay charges relating to the services of that third party to HKBNES on demand.

8.6 Unless otherwise stated by HKBNES, statements for charges payable will be rendered through electronic means in accordance with HKBNES's normal billing cycle for the type of Service provided. A hard copy of the statement will be available upon request subject to charges. Any such charges are due and payable by the Customer to HKBNES by the date or within the time specified in the relevant statement from HKBNES. Statements for Taxes payable by the Customer will be rendered by HKBNES from time to time upon its receipt of request or notice from the competent governmental authority. Charges for Taxes are due and payable by the Customer to HKBNES by the date or within the time specified in the relevant statement from HKBNES. The Customer shall be solely responsible for any late payment interest or penalty charges imposed by the relevant governmental authority if it fails to make payment on or before the payment due date as specified in the relevant statement.

8.7 If the Customer has paid an amount of charges in advance and that the amount is less than the amount of charges payable for that period (including the effect of variation to charges during a period), the Customer shall pay to HKBNES for the difference between the amount paid in advance and the amount of charges so payable.

8.8 Notwithstanding the foregoing HKBNES may at any time issue an interim statement for charges due at the date of issue requiring payment of those charges immediately or within a specified period, and on issue of such an interim statement or demand, those charges are so due and payable by the Customer to HKBNES.

8.9 Payment by cheque will be deemed to be unpaid until the cheque has been cleared and the Customer will be liable to HKBNES for any bank fees incurred for dishonoured cheque.

8.10 Where any amount due by the Customer to HKBNES in respect of charges payable remains unpaid on the date on which it is due, without prejudicing any other remedies available to HKBNES, all charges payable by the Customer under the Customer's account(s) with HKBNES shall become due immediately and payable by the Customer on demand and HKBNES shall have the right to suspend all other Services subscribed under the Customer's account(s). The Customer shall be liable to pay HKBNES interest on any amount which is payable to HKBNES and remains unpaid at the rate equivalent to the prime rate of interest charged on overdrafts by The Hong Kong and Shanghai Banking Corporation Limited plus 2% for the period during which the payment is overdue.

8.11 The Customer will continue to be responsible for all charges for the Service between the time of suspension and the actual cancellation or termination of the Service.

8.12 Where the total charges payable in any account rendered do not amount to a multiple of 5 cents, the total charges may be rounded down to the nearest 5 cent multiple. The Customer will not be liable for the difference between the total charges and the total charges

which have been rounded down, which difference will be withdrawn.

8.13 If there is any dispute relating to the charges for Services, the records of HKBNES will be conclusive evidence of the charges payable by the Customer. Any disputes must be raised with HKBNES within 15 days of receipt of the statement.

8.14 The Customer shall pay for all charges for Services on or before the payment due date set out in the relevant statement of account from HKBNES.

8.15 Unless otherwise agreed, HKBNES will provide consolidated account for all Services provided by HKBNES and charges under consolidated account will be collected by HKBNES using one of the payment methods chosen by the Customer.

## **9 Security for Payment of Charges**

9.1 At any time HKBNES may require the Customer:

- (a) to provide a security deposit for charges incurred or will be incurred for the Service; or
- (b) to pay in advance the whole or part of the charges which will be or may be estimated to be incurred for the Service.

9.2 The receipt by HKBNES of such a security or advance payment will not relieve the Customer from compliance with the Contract as to payment of periodical charges in advance, nor constitute a waiver or modification of the terms and conditions of the Contract for the suspension or termination of a Service for non-payment of any charges.

9.3 If the Customer has provided security or paid charges in advance, the Customer is entitled on cancellation or termination of the Service to the release or refund of any security or any advance not required to cover charges outstanding at the time of cancellation or termination provided the Customer submits its request in writing to HKBNES within six (6) months of the cancellation or termination of Service.

9.4 Security or advance payment made by the Customer is not risk free. In the unlikely event that HKBNES goes into liquidation, there is no guarantee that Customer will receive refund of any security or advance payment, the rights for the Customer to get refund will be subject to the relevant laws and regulations governing liquidation of companies in Hong Kong.

## **10 Cancellation, Change or Deferment of Application**

10.1 The Customer may cancel, change or defer the Application by written notice to HKBNES. The Customer shall pay to HKBNES a cancellation fee (if any) specified in the Application and/or the Tariff and such amount for the work done, any expenses incurred and loss or damage sustained by HKBNES as a result of the cancellation, change or deferment.

10.2 If the Customer fails to confirm the installation date or cutover date for the Service as notified by HKBNES six months after the Application is accepted by HKBNES, the Customer will be deemed to have cancelled the Application. If the Application is deemed cancelled by the Customer, HKBNES will charge the Customer a cancellation fee (if any) specified in the Application and/or the Tariff and such amount for the work done, any

expenses incurred and loss or damage sustained by HKBNES as a result of the cancellation.

### **11 Suspension or Restriction of Service**

HKBNES may suspend or restrict a Service at any time without notice for any period as it sees fit without being liable to the Customer or any third party for any loss or damage whatsoever resulting from or in connection with the suspension or restriction of the Service:

- (a) in an emergency or when HKBNES considers it necessary in order to safeguard provision of Services or the Network;
- (b) while payment of charges for the Services is overdue;
- (c) if HKBNES is unable to locate the Customer at the address notified by the Customer and has reason to believe that the Customer is no longer residing at that address;
- (d) if in the reasonable opinion of HKBNES there is, has been or may be unauthorised or fraudulent use of the Service;
- (e) if the Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or composition with the Customer's creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed;
- (f) if the Customer is in breach of the Contract;
- (g) if in the reasonable opinion of HKBNES the use of the Service or Equipment by the Customer is causing or may potentially cause damage or any interference to the Network or Equipment or inconvenience to other Customers of HKBNES;
- (h) to carry out routine maintenance to the Network;
- (i) if the Customer has incurred charges for the Service which has exceeded the credit limit allowable by HKBNES irrespective of whether such credit limit has been communicated to the Customer; or
- (j) if HKBNES is obliged to comply with a direction or request of the CA or other competent government authority.

### **12 Termination of Service**

12.1 HKBNES may terminate the provision of a Service to the Customer without necessarily informing the Customer:

- (a) following the removal of such Service from its Tariff;
- (b) following the suspension of the Service to the Customer;
- (c) if the Customer vacates the premises in which an Equipment is located and does not request cancellation of the Services at that time;
- (d) if the Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or composition with the Customer's creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed;
- (e) if the Customer being a natural person dies;
- (f) if, whether or not the Service has already been suspended under clause 11, payment of an account, or provision of security for the Service is overdue;
- (g) if HKBNES is refused entry or for any other reason is unable to enter any premises to install, inspect, repair or change the Equipment or other equipment used in connection with the Services;
- (h) if HKBNES has given written notice to the Customer that there is a fault in the operation of the Service which is caused by a defect in facility which is provided by the Customer and which HKBNES has not contracted to

maintain and the defect is not corrected by the Customer after expiration of the time specified in HKBNES's notice;

- (i) in accordance with clause 4.6; or
- (j) if the Customer is in breach of the Contract.

12.2 The minimum subscription period ("MSP") for a Service is 3 months unless otherwise specified in the Tariff or as stated on the Application. If the Customer does not intend to renew the Contract upon the expiry of the MSP, the Customer must give HKBNES not less than 30 days' written notice. The Service will continue on a month to month basis after the expiration of the MSP. Except for termination under clause 12.1, either party may terminate a Service by giving to the other party not less than 30 days' written notice. If the Service is terminated before expiration of the MSP by the Customer or by HKBNES under clause 12.1, the Customer shall on demand pay to HKBNES an early termination charge as set out in the applicable Tariff or the Application. If early termination charge is not set out in the Tariff or the Application, the early termination charge will be an amount equivalent to charges payable for the Service for the remaining term of the MSP. MSP shall exclude any period during which free rental has been provided. For termination of Service the Customer shall complete the service disconnection form from HKBNES and give not less than 30 days' written notice.

12.3 Where provision of a Service has been terminated under clause 12.1 or 12.2:

- (a) the reconnection of the Service will be subject to the appropriate connection charge specified in the Tariff;
- (b) HKBNES may enter the premises to remove the Equipment;
- (c) HKBNES may, where it is unable within 14 days from the date the Service is terminated to enter premises to recover the Equipment, recover against the Customer in any court of competent jurisdiction the value of the Equipment as a debt due to HKBNES; and
- (d) HKBNES may recover against the Customer in any court of competent jurisdiction any charges payable by the Customer which remains unpaid following the due date for payment. Without limiting the foregoing the Customer will be liable for all legal costs (including solicitor and client costs) and all other reasonable expenses incurred in recovering any charges due and payable to HKBNES.

12.4 Notwithstanding the foregoing HKBNES may terminate the provision of the Service to the Customer with not less than 30 days written notice without any liability to the Customer.

### **13 Personal Data**

13.1 Personal information provided to HKBNES will be used in accordance with the purposes stated in HKBNES's Personal Data Statement (the "Statement"). The Statement is published on HKBNES's website at [https://www.hkbnes.net/tnc/PPS\\_Eng.pdf](https://www.hkbnes.net/tnc/PPS_Eng.pdf). HKBNES may request personal information from the Customer ("Personal Data") in connection with the provision of the Service. The Customer may decline to provide such information requested by HKBNES, in which event HKBNES may decline to provide the Services to the Customer.

13.2 The Customer must notify HKBNES promptly of any change of address or any particulars provided to HKBNES

which may affect the provision of Services to the Customer.

13.3 Notwithstanding the foregoing the Customer shall be deemed to have consented to its Information being included in a directory (in whatever medium) published by HKBNES, and/or being disclosed to a third party through any telephonic directory enquiry service, unless the Customer advises HKBNES in writing otherwise.

13.4 In circumstances where HKBNES has obtained from the Customer Personal Data concerning payment instructions for charges due on the Customer's account, HKBNES may use the said Personal Data to collect all payments due on the Customer's account for all Services subscribed to by the Customer, including those Services subscribed to by the Customer after the provision of the said Personal Data by the Customer to HKBNES.

#### **14 Exclusions and Limitation of Liability**

14.1 To the extent allowed by law, the liability of HKBNES whether arising from a breach of contract or negligence on the part of HKBNES or the employees or agents or contractors or suppliers (including suppliers of the Services or parts of the Services) will be limited to the supply or resupply of the Services, as the case may be or the applicable service level rebates or credits.

In any event, the maximum liability of HKBNES shall not exceed the total amount received by HKBNES for the Services during the 3 months period prior to when such claim arose.

14.2 Under no circumstances will HKBNES, its employees, agents or contractors or suppliers (including suppliers of the Services or parts of the Services) be liable in any way whatsoever to the Customer or any other person for any special, indirect or consequential loss or damage, loss of profit, business, revenue, goodwill, use of data or anticipated savings.

14.3 If HKBNES fails to meet any service level agreed with the Customer applicable to the Services, HKBNES's liability shall be limited to the applicable service level rebates or credits agreed with the Customer.

14.4 HKBNES will not be liable to the Customer or any person claiming through the Customer for any defaults caused by an event beyond the reasonable control of HKBNES including any repair required for any fault in the Service due to natural disaster; misuse or unauthorised use of Services by the Customer or any third party; the Customer's provided equipment; or abnormal environment conditions.

#### **15 General Provisions**

15.1 The Contract represents the entire understanding between HKBNES and the Customer relating to the Services and there are no promises, terms, conditions or obligations, oral or written, expressed or implied, other than those contained in the Contract.

15.2 Each of the provisions of the Conditions is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions will not be affected in any way.

15.3 The Contract and any transactions contemplated by the Contract are governed by the law in force in Hong Kong and each party submits to the exclusive jurisdiction of the courts of Hong Kong for determining any disputes concerning the Contract and any transactions contemplated by the Contract.

15.4 The Conditions and the Tariff may be translated into Chinese. If there is any inconsistency or conflict between the English version and the Chinese version, the English version shall prevail, to the extent of such inconsistency or conflict.

15.5 A copy of the Conditions and the Tariffs may be inspected at the principal business premises of HKBNES or provided to the Customer on request at a fee.

15.6 Any statements, notices or communication by HKBNES to the Customer shall be sufficiently given to the Customer if addressed to the Customer at the address notified to HKBNES by the Customer, by post or facsimile transmission or e-mail and shall be deemed to have been given and received on the day on which such communication ought to have been received in the ordinary course of such transmission or delivery.

15.7 The Customer shall not assign or transfer any or all of its rights and obligations under the Contract to any third party. HKBNES may at any time assign or transfer any or all of its rights and obligations under the Contract to any person without the Customer's agreement.

15.8 No delay, neglect or forbearance on the part of HKBNES in enforcing against the Customer any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of HKBNES under the Contract.

15.9 Cancellation or termination of a Service or the Contract does not operate as a waiver of any breach by a party of any of its provisions and is without prejudice to any rights, liabilities or obligations of any party which have accrued up to the date of termination, including without limitation an obligation to pay any accrued charges.

15.10 These Conditions may be amended from time to time by HKBNES. Such amendments shall become effective when published, advertised or notified to the Customer by such means as HKBNES thinks fit and shall be binding on the Customer if the Customer continues to use any of the Services after the effective date thereof. For the most up-to-date version of these Conditions, the Customer may access HKBNES's official website [www.hkbnes.net](http://www.hkbnes.net).

#### **16 Third Party Rights**

The Contracts (Rights of Third Parties) Ordinance (Cap.623) shall not apply to the Contract. For clarity, a person who is not a party to the Contract shall have no right to enforce the Contract.

**END**