

HKBN ENTERPRISE SOLUTIONS DATACENTRE SERVICE TERMS

These terms govern the provision of DATACENTRE service by HKBN Enterprise Solutions (“HKBNES”) to the Customer. The Customer is deemed to have accepted these terms when subscribing for the Services.

1. Definitions

Unless the context requires otherwise, the following definition shall apply:

“**Agreement**” shall comprise of these terms and any guidelines or policies issued by HKBNES for the Services.

“**Co-location Space**” means the physical area within the DATACENTRE as identified on an applicable Service Order.

“**Customer**” means the company or person as identified on an applicable Service Order.

“**DATACENTRE**” means the data centre that HKBNES owns, leases, licenses or controls.

“**HKBNES**” means either (i) HKBN Enterprise Solutions Limited; (ii) HKBN Enterprise Solutions HK Limited; (iii) HKBN JOS Limited; or (iv) COL Limited, as set out in the Service Order and includes their successors, transferees or assignees.

“**HKBNES’ Network**” means the network of routers, switches and communication channels owned or controlled by HKBNES.

“**Party**” means each of HKBNES and Customer individually and “**Parties**” means HKBNES and Customer collectively.

“**Rack**” means the exclusive location within the DATACENTRE or a location agreed by the parties in writing, available at all times to the Customer to place its equipments pursuant to this Agreement.

“**Services**” means the services ordered by the Customer on one or more Service Orders.

“**Service Charges**” refers to the charges as set out in the Service Order(s) payable by the Customer for the Services.

“**Service Order(s)**” means the documents (such as Order Confirmation form) signed by the Parties and incorporated by reference, setting forth the Services to be provided, the term of Services, the prices and payment schedule, and any other provisions upon which the Parties mutually agree in writing. All Service Orders will be subject to the terms of this Agreement.

“**Special Conditions**” refers to those conditions specific to each Service as set out in the Schedule.

2. Services

2.1 Provision of Services: The Services will be provided to Customer on the terms set forth on the Service Order(s) and this Agreement. Requests for additional Services may be made to HKBNES and will be effective when accepted by HKBNES in writing. Such additional Services shall result in an increase in the Service Charges as set forth in the Service Order. HKBNES may perform the Services by itself or through its affiliates or contractors, however HKBNES will remain accountable for the performance of the Services.

2.2 Use of Services: The Customer shall use the Services in accordance with this Agreement. The Customer shall use the Services only for lawful purposes and in compliance with all applicable laws. The Customer shall not misuse or abuse any of HKBNES’ property or equipment or equipment of other customers of HKBNES at the DATACENTRE.

2.3 No Lease: This Agreement is a service agreement and is not intended to and shall not constitute a lease or tenancy or other interest in the DATACENTRE or other Company premises, any equipment or any real or personal property.

3. Charges and Payment

3.1 Service Charges: Customer shall pay the Service Charges stated on the Service Order(s) or otherwise due to HKBNES. Service Charges do not include any applicable taxes or duties which may be imposed by relevant authority in relation to the Services or any electricity charges or any third-party charges.

3.2 Electricity Charge: Electricity usage will be measured in kVA. Any electricity usage over the threshold set out in the Service Order(s) will be rounded up to the next whole kVA and subject to additional charges or a surcharge calculated at the rate set out in the Service Order(s). Electricity charges will be calculated in accordance with HKBNES’ records and will be subject to upward adjustment from time to time according to rates published by electricity supplier. For clarity, the records of HKBNES shall be final and binding on the Parties.

3.3 Billing: On the Service commencement date (as stated on the relevant Service Order) for each Service or three (3) days after its equipment has been delivered to the DATACENTRE, whichever is earlier, Customer will be billed an amount equal to all non-recurring charges indicated in the Service Order and the monthly recurring charges for the first month of the term. Monthly recurring charges for all other months will be billed in advance; charges based on usage will be billed according to HKBNES’ billing cycle.

3.4 Due date: All Service Charges and other fees will be due in Hong Kong dollars and within the time as stated in the invoice. Late payments will accrue interest at a rate of HSBC best lending rate plus two (2) percentage points or the highest rate allowed by applicable law, whichever is lower. If Customer fails to make payments when due, HKBNES has the right to impose interest rate and/or require payment in advance for Services and other forms of security such as bank guarantee.

3.5 Security: HKBNES may require security deposit such as bank guarantee or payment in advance prior to or during provision of the Services and the Customer shall arrange for such security deposit as required. HKBNES has the right to suspend or terminate provision of services until security deposit is provided.

3.6 Adjustment: Service Charges will be increased each year on the anniversary date of this Agreement according to the composite Consumer Price Index (“CPI”) published by the Census and Statistics Department (“CSD”) for the two immediately preceding calendar years. For example, revised Service Charges in February 2022 will be calculated as follows:

$$\text{Revised Service Charges} = \text{Current Service Charges} \times (A/B)$$

Where,
A = the Composite CPI published by CSD for 31 December 2021

B = the Composite CPI published by CSD for 31 December 2020

No adjustment will be made if A is less than B.

4. Equipment

4.1 Equipment Sales: If any Service Order includes the sale of equipment to Customer (including hardware, software, or other equipment), Customer will pay the prices specified in the Service Order plus all applicable taxes, import and custom duties, and similar charges, upon the terms set forth in this Agreement. All risk of loss or damage to such equipment passes to Customer upon installation at the site designated in the Service Order. Title passes to Customer when all outstanding balances due for such equipment are paid in full. If Customer defaults on payment, HKBNES may enter the premises and take possession and remove such equipment at the cost of Customer.

4.2 Company-Supplied Equipment: Customer shall have no right or interest in any Company-supplied equipment other than the right to use such equipment during the specified term while payments are current. Customer shall be liable to HKBNES for any damage to such equipment caused by Customer or Customer's representatives. Customer shall provide the suitable environment for the equipment and otherwise follow the reasonable instruction from HKBNES in relation to the use and care of the equipment.

5. Service Quality

HKBNES will provide the Services at a level of quality conforming to generally accepted industry standards and in compliance with all applicable laws and regulations. Except as stated otherwise, Customer's use of the Services is at Customer's own risk. HKBNES does not make, and hereby disclaims, any and all other express and implied warranties, including warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. Except as stated otherwise, there is no warranty that the Services will be uninterrupted, error-free, or completely secure.

6. Disclaimer of Third Party Actions and Control

HKBNES does not have control on the flow of data to or from HKBNES' Network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which Customer connections to the Internet (or portions thereof) may be impaired or disrupted. It cannot be guaranteed that such situations will not occur and, accordingly, HKBNES disclaims any and all liability resulting from or related to such events. If HKBNES believes that Customer's use of the Services or interaction with the Internet or such third parties is causing harm to or threatens to cause harm to HKBNES' Network or its operations, HKBNES shall have the right to suspend the Services. HKBNES will restore Services at such time as it reasonably deems that there is no further harm or threat of harm to HKBNES' Network or its operations.

7. Limitations of Liability

HKBNES shall not be liable for any incidental, punitive, indirect or consequential damages, lost revenue or lost profits or for any loss of technology, loss of data, or interruption or loss of use of Service

or any other similar claims by Customer or related to Customer's business, even if HKBNES is advised of the possibility of such damages. Notwithstanding anything to the contrary HKBNES' maximum aggregate liability to Customer related to or in connection with this Agreement whether under theory of contract, tort (including negligence), strict liability or otherwise shall be limited to the total amount as set forth in any applicable Service Level Agreement or the re-supply of Services.

8. Indemnification

Customer shall indemnify, defend and hold harmless HKBNES, its directors, officers, employees, and affiliates (collectively, the "Indemnified Entities") from and against any and all claims, actions or demands brought against any of the Indemnified Entities alleging: (a) infringement or misappropriation of any intellectual property rights by the Customer; (b) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortious or illegal conduct by the Customer; (c) any property loss suffered by any other customer of HKBNES resulting from acts or negligent omissions by the Customer or its representative(s); or (d) any personal injury caused by the Customer suffered by any representative, employee or agent of HKBNES arising out of such individual's activities related to the Services, except to the extent caused by HKBNES' negligence or wilful default.

9. Term

This Agreement will commence on the date when HKBNES accepts the Service Order and continue for a term as set out in the Service Order unless otherwise terminated as provided in this Agreement (the "Term"). On expiration of the Term this Agreement will be terminated unless otherwise agreed by the parties in writing.

10. Termination

10.1 Non-payment: HKBNES may terminate this Agreement (or at its option, only the relevant Services) if any amount due is not paid in full when it falls due. Services to Customer may be suspended if any amount due is not paid in full when it falls due. Reinstatement of Services will involve costs, for which a fee will be required.

10.2 Insolvency: Either Party may terminate this Agreement upon written notice to the other Party if the other Party becomes the subject of a petition in a bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

10.3 Breach: Either Party may terminate this Agreement if the other Party is in material breach of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of the same.

10.4 Sale & Redevelopment: HKBNES may terminate this Agreement upon giving three (3) months prior written notice to Customer if any part of the building where the DATACENTRE is situated becomes or will become unavailable due to redevelopment, demolition, renovation, refurbishment or otherwise, without any liability to Customer.

10.5 Consequences of Termination: Upon expiration or termination of this Agreement: (a) HKBNES will cease providing the Services; (b) except in the case of termination by Customer pursuant to Section 10.3; or by HKBNES pursuant to Section 10.4, all of

Customer's payment obligations under this Agreement, including the Service Charges through to the end of the term will become due in full immediately; and (c) HKBNES may restrict Customer's access to its equipment in any facility of HKBNES and to hold such equipment as security until payment in full has been received or until such equipment is taken in full or partial satisfaction of any lien or judgment.

11. Early Termination

If a Service Order is terminated prior to expiration of its Contract Period by: (a) HKBNES pursuant to Section 10.1, 10.2 or 10.3; or (b) the Customer for reason other than pursuant to Section 10.2 or 10.3, upon receipt of the invoice, the Customer shall immediately pay to HKBNES an early termination charge as a pre-estimated damages, a sum equal to 100% of the remaining monthly rental charges under all terminated Service Orders plus any remaining unpaid charges.

12. General Provisions

12.1 Force Majeure: Other than with respect to failure to make payments due, neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labour disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control provided the Party affected shall promptly notify the other Party of the event and take reasonable steps to minimize the effect thereof.

12.2 Confidentiality: Each Party agrees that all information furnished to it by the other Party, or information of the other Party to which it has access under this Agreement, shall be deemed the confidential and proprietary information ("Confidential Information") of the disclosing Party and shall remain the sole and exclusive property of the disclosing Party. Each Party shall treat the Confidential Information and the contents of this Agreement in a confidential manner, shall use such information only to the extent necessary to perform its obligations, and, neither Party may disclose the same to anyone other than its employees and agents strictly on a need to know basis and who agree to be bound by the terms thereof, without the written consent of the Disclosing Party. The above obligations will not apply if such information: (a) is known to the receiving Party prior to receipt from the disclosing Party from a source other than one having an obligation of confidentiality to the disclosing Party; (b) becomes known (independently of disclosure by the disclosing Party) to the receiving Party from a source other than one having an obligation of confidentiality to the disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; (d) is independently developed by the receiving Party; or (e) is required to be released by law or regulation, provided that, to the extent permitted by law, the receiving Party provide prompt written notice to the disclosing Party of such impending release, and the receiving Party cooperate fully with the disclosing Party to minimize such release.

12.3 Marketing: Unless Customer at any time requests otherwise, HKBNES may refer to Customer by name and with logo in HKBNES' marketing materials and website and, subject to Customer's review and approval, may promote Customer's business and use of the Services through a press release, advertising, and other marketing literature.

12.4 Assignment: Customer shall not assign its rights or interests or obligations under this Agreement either in whole or in part without the prior written consent of HKBNES. HKBNES may assign or transfer any of its rights or interests or obligation under this Agreement without the prior written consent of Customer.

12.5 No Resale: Customer must not resell or sublet the Services. The provisioning of web-hosting on Customer's equipment and/or Internet service is not considered reselling the Services. Customer hereby indemnifies HKBNES against any harm or any claims arising out of acts or omissions of any customers of Customer or other third parties using Customer's equipment or service that is the subject of this Agreement.

12.6 Relocation of DATACENTRE / Co-location Space / Rack: At any time during the Term, HKBNES shall be entitled to, by giving three (3) months prior written notice to Customer, and at HKBNES' own expense, change the location of the DATACENTRE and/or Co-location Space and/or Rack to an alternative suitable location nominated by HKBNES for the continuation of the Service. HKBNES will use commercially reasonable effort to minimize any interruption to the Service attributable to the relocation.

12.7 Notices: Any required notice may be delivered personally or by courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, to either Party at the name and address of the Service Orders or at such other address as such Party has provided to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered personally or by courier, or five (5) days after it is sent by mail. In addition, HKBNES shall have the right to send Customer notices, other than notices for default or termination, to Customer's email address as contained on HKBNES' customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

12.8 Relationship of Parties: This Agreement shall not establish any relationship or partnership, joint venture, employment, franchise or agency between the Parties.

12.9 Governing Law and Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the Parties expressly submit to the exclusive jurisdiction of the Courts of Hong Kong for determining any disputes.

12.10 Entire Agreement: This Agreement, together with the Service Order(s) and Schedule is the complete agreement and understanding of the Parties with respect to the subject matter of this Agreement and supersedes any other agreement or understanding, written or oral. If any provision of this Agreement is declared void or unenforceable, such provision will be deemed amended to achieve as nearly as possible the same economic effect as the original terms and the remainder of this Agreement will remain in full force and effect. If a conflict arises between a Party's pre-printed business form and this Agreement or between a Service Order and this Agreement, this Agreement will take precedence.

12.11 Survival: The Parties' respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on

liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

12.12 Amendments: HKBNES may amend any terms of this Agreement.

13. Third Party Rights

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

Schedule Special Conditions

1. **Use of Co-location Space:** Customer may use the Co-location Space only for the purposes of maintaining and operating computer equipment as necessary to support links to HKBNES' Network and from there to third parties.
2. **Customer Equipment:** Except as otherwise provided, Customer is responsible for all aspects of installation and removal of its equipment, including bringing appropriate related equipment, tools and packaging materials. Customer will install its equipment in the Co-location Space after obtaining the appropriate written authorization from HKBNES to access the premises and for installation. All equipment to be installed shall be subject to written authorization from HKBNES. Customer will remove all packaging for its equipment promptly after installation. If Customer uses an agent or other third party to deliver, install or remove its equipment, Customer will be solely responsible for the acts of such party. At Customer's option, HKBNES will remove and package Customer's equipment and place it in a designated area for pick-up, on the condition that Customer either provide or pay for all needed packaging plus pay HKBNES' packaging fees and charges. Within five (5) days after authorization from HKBNES, Customer will remove its equipment from the designated area or arrange on a pre-paid basis for a carrier to pick-up and ship such equipment to Customer. Prior to the expiration or termination of the Term, Customer will remove all of its equipment and any other property from HKBNES' premises and return the Co-location Space in the same condition as it was prior to Customer installation. If Customer does not remove such property prior to the expiration or termination of the Term, HKBNES, at its option and at Customer's expense, may remove and store any and all such property, return such equipment to the Customer, or dispose of such equipment without liability for any related damages. Notwithstanding the foregoing, HKBNES reserves the right to deny Customer the right to remove Customer equipment from the Co-location facility in the event Customer is not current in the payment of its obligations. Except as specifically provided, Customer expressly assumes all risk of loss to its equipment in the Co-location Space. Customer shall be liable to HKBNES for any damage to the Co-location Space or equipment of HKBNES or its other customers caused by Customer, Customer's equipment or Customer's representatives, agents or employees.
3. **Security and Access Procedures:** Customer may access the Co-location Space only in accordance with the DATACENTRE Security and Access Procedures in the Schedule, as updated from time to time, subject to notice to Customer of any material changes. HKBNES may suspend for good cause the right of any Customer employees, agents or representatives to visit and/or access the Co-location Space and related premises, based on such employees', agents' or representatives' conduct. Customer shall ensure that its access list is current and accurate. Customer shall be responsible for any unauthorized access to its equipment through the Internet and any resulting use of the Service.
4. **Internet Resources:** Any Internet resources (including Internet protocol addresses) provided by HKBNES to the Customer shall remain the property of HKBNES. The Customer shall have no right or title whatsoever. HKBNES may withdraw any of the Internet resources at any time. The Customer shall not use, and shall not permit any person to use, the Internet resources provided by HKBNES:
 - (a) In connection with, or in, the commission of an offence against the laws of the jurisdiction in which the Service is being provided;
 - (b) For the purpose of carrying on a business of providing telecommunication services;
 - (c) Which violates or infringes any rights of any third party (including intellectual property rights);
 - (d) For the purpose of sending unsolicited advertising material or messages in breach of applicable laws;
 - (e) 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 HKBNES or its other customers; or
 - (f) For purposes not authorized by HKBNES or otherwise harmful to HKBNES or its other customers.
5. **Cross Connects:** Customer connections to anything inside the Co-location Space are subject to approval by HKBNES. Use of any such connections is subject to audit by HKBNES, who reserves the right to suspend any connection found to be unauthorised. Customer is responsible for ordering, maintaining, terminating and paying for any approved cross-connects or other circuits provided to Customer.
6. **Scheduled/Routine Maintenance:** HKBNES will conduct routine scheduled maintenance of the DATACENTRE and its services according to the maintenance schedule given by HKBNES to the Customer in advance. In the event of critical maintenance situation, HKBNES may perform emergency maintenance at any time. HKBNES will use its reasonable effort to notify the Customer of the event and estimated time period of the emergency maintenance. During these scheduled and emergency maintenance periods, the Customer's equipment may be unable to transmit and receive data and the Customer may be unable to access the Customer's equipment. The Customer agrees to cooperate with HKBNES during the scheduled and emergency maintenance periods.
7. **Insurance:** Customer will keep in full force and effect during the term of this Agreement to the satisfaction of HKBNES: (a) commercial general liability insurance in an amount not less than HK\$50 million per occurrence or aggregate for bodily injury and property damage; (b) employer's liability insurance in an amount of not less than HK\$50 million per occurrence and an unlimited amount for aggregate; and (c) workers' compensation insurance in an amount not less than that required by applicable law. Customer also agrees

that it will be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain other insurance at levels no less than those required by applicable law and customary in Customer's and its agents' industries. Prior to installation of any equipment in the Co-location Space or otherwise as HKBNES may request, Customer will furnish HKBNES with certificates of insurance which evidence the minimum levels of insurance set forth above, and will cause its insurance to name HKBNES as an additional insured and notify HKBNES in writing of the effective date of such coverage.

8. Acceptable Use

- (a) Customer will at all times comply with and conform its use of the Service to the Use Guidelines (the "Guidelines") issued by HKBNES, as updated from time to time, subject to notice to Customer of any material changes. In the event Customer violates the Guidelines, HKBNES shall have the right to immediately suspend Service or terminate the Agreement and seek other appropriate remedy available.
- (b) The Customer shall not bring any prohibited materials as defined below into the DataCentre including
 - (i) food, drink and tobacco products;
 - (ii) explosive and hazardous materials;
 - (iii) alcohol, illegal drugs and other intoxicants;
 - (iv) electro-magnetic devices which could cause unreasonable interference with computer and telecommunication equipment; or
 - (v) radioactive materials and photographic equipment of any kind.

- 9. Illegal Use:** Customer shall cooperate in any investigation of Customer's alleged illegal use of HKBNES' facilities or other networks accessed through HKBNES' Network. If Customer fails to cooperate with any such investigation, HKBNES may suspend Customer's Service. Additionally, HKBNES may modify or suspend Customer's Service in the event of illegal use of HKBNES' Network or as necessary to comply with any law or regulation as reasonably determined by HKBNES.

- 10. Other Networks:** Customer is responsible for paying any fees, obtaining any required approvals and complying with any laws or usage policies applicable to transmitting data beyond HKBNES' Network and/or through other public and private networks. HKBNES is not responsible or liable for performance or non-performance of such networks or their interconnection points.

DATACENTRE Security and Access Procedure

1. Customer and its representatives shall submit the associated identity information i.e. name(s) and telephone number(s) of the representative(s) or authorized office person(s) before work to the Operations Staff in order to work inside the DATACENTRE.
2. Customer should notify and submit to the DATACENTRE the "Access Application Form" at least one (1) day in advance especially for any resource booking.
3. Visitor(s) should sign the logbook for access. If the visitor is not on the permitted list, Operations Staff will contact the representative or authorized office person for verification.
4. Operations Staff will check the name and ID of the visitor(s).
5. Operations Staff will arrange an access card for visitor(s) (with limited access right).
6. Operations Staff will accompany with the visitor(s) to open the related rack doors.
7. Operations Staff will regularly monitor the visitor(s) through Closed-Circuit Television ("CCTV").
8. Operations Staff should accompany with the visitor(s) to close all opened rack doors before departure.
9. Visitor(s) should return the access card to Operations Staff and sign out in the logbook.
10. Visitor(s) must not bring in camera, video camera and/or video recording devices for recording purposes without prior approval by HKBNES. All such devices may be left in the Operations Centre for temporary storage.