

1. Definitions

All capitalised terms used in this document shall have the meaning ascribed in HKBNES’s General Terms and Conditions of Service unless the context requires otherwise or defined below:

“**Acceptable Use Policy**” or “**AUP**” means the rules on the use of the Services as specified in clause 5;

“**Customer Content**” means software (including machine images), data, text, audio, video, content, materials or data that Customer uses, installs, uploads or hosts using the Services (but does not include the Services, Software or Third Party Software provided by HKBNES);

“**Service(s)**” means the software applications provided by HKBNES and ancillary services as set out in the Application, to be used in conjunction with the Customer’s separate subscription to HKBNES FibreCloud and other Cloud-related services;

“**Software**” means the downloadable tools or licensed software used to provide the Services;

“**Third Party Software**” means any third party software obtained or derived from third party sources and made available to Customer through, within, or in conjunction with the Services; and

“**User(s)**” means those employees, contractors, and end users, as applicable, authorised by Customer to use the Services.

2. Provision of Services

- 2.1 HKBNES will provide the Services to Customer subject to the Contract and these special terms and conditions. Customer and its Users shall comply with the Contract including these special terms and conditions and the AUP. For clarity a breach of any provisions in these special terms and conditions or the AUP will entitle HKBNES to take such action as it sees fit including restricting, suspending or terminating the Services to Customer with or without notice.
- 2.2 In connection with the Services, HKBNES will assign or provide Customer with access to or right to use (as applicable):
- a web portal that enables Customer and its User(s) to manage and administer certain functions and/or resources of the Services;
 - Equipment;
 - Software;
 - Third Party Software;
 - support service; and
 - ancillary services including any deliverables as set out in the Application.
- 2.3 HKBNES will not remove Customer Content from the Services without notifying Customer, unless required to comply with the law or requests of governmental authorities.
- 2.4 Support service does not include any problems arising from:
- modification, alteration or addition or attempted modification, alteration or addition of the Services undertaken by persons not authorized by HKBNES; or
 - Customer Content or hardware supplied by Customer. For clarity, HKBNES provides support service only to Customer’s administrative or technical contacts listed on Customer’s account and will not provide support directly to Users or other third party.
- 2.5 Services do not include any accessories or peripheral devices, such as USB attachments or licence key dongles. HKBNES does not provide any backup of Customer data unless Customer subscribes to the backup service.
- 2.6 Customer shall only install Software, updates and patches as directed by HKBNES (including allowing HKBNES to install certain software, updates and patches necessary for the proper function and security of the Services); keep HKBNES informed of any known or threatened non-compliance with the AUP, and shall provide HKBNES or its Software licensor(s) with all necessary assistance in enforcing these provisions.
- 2.7 HKBNES may at any time make changes to the Services (including infrastructure, security, technical configurations, application features, etc.) and may establish new procedures for the use of the Services including to reflect changes in technology, industry practices, patterns of system use and availability of the Services. HKBNES will use commercially reasonable effort to minimize any interruption to the Services due to such changes. HKBNES may change the Services specification and such changes will not result in a material deterioration in the level of performance or availability of the applicable Services.
- 2.8 HKBNES does not guarantee uninterrupted, completely secure or error-free Services. HKBNES will not be responsible for any issues related to the security of the Services that arise from Customer Content. Customer shall take all reasonable steps to mitigate any inherent risks and use security precautions in using the Services.
- 2.9 The provision of the Services is subject to availability and the actual delivery time for the Services is subject to the availability of HKBNES network to the installation address
- 2.10 The Service is subject to the Customer’s equipment and/or software meeting the relevant specifications for interoperability with HKBNES’s network and electronic platform. Any equipment which the Customer intends to connect to HKBNES’s network for the purpose of the Services must be approved by HKBNES prior to any connection, and must be in compliance with the technical standards specified by HKBNES. At the time of application for the Services the Customer must provide all details regarding the equipment which it intends to connect to HKBNES’s network. HKBNES may reject the application if the required information is not provided or HKBNES opines that the said equipment does not comply with HKBNES’s technical standards. HKBNES may at any time, without being liable to the Customer, disconnect the Customer’s equipment connected to HKBNES’s network if:
- the configurations or technical specifications of such equipment so connected differ from the details provided by the Customer in its application for the Services;
 - there is any malfunction of the equipment; or
 - the provision of the Services to the Customer is terminated or discontinued for any reasons.
- 2.11 The provision of the Services may be affected by a number of factors beyond HKBNES’s control, such as power failure or Internet availability.
- 2.12 HKBNES shall not be liable to Customer or Users if HKBNES is unable to perform an obligation or provide the Services because of an event beyond the reasonable control of HKBNES or its supplier of services, including fire, flood, power failures, war, acts of God, civil commotion, strikes, labour disputes, freight embargoes, pandemic or epidemic, acts of any government, quasi-government or public or

**HKBNES ENTERPRISE SOLUTIONS HK LIMITED (“HKBNES”)
Special Terms and Conditions for Cloud Applications**

military authority, default or failure of a third party, shortages or equipment or supplies, or Internet availability or telecommunication network outage.

The following clauses 2.13 to 2.16 shall apply to Cloud Video Service, and clauses 2.13 to 2.18 shall apply to Cloud Voice Service:

- 2.13 The Customer shall be liable for any additional charges incurred due to regulatory changes or changes in interconnection charge arrangement between HKBNES and other service provider(s).
- 2.14 HKBNES will not be able to ascertain the physical location of the caller of using Cloud Voice or Cloud Video Service and therefore will not be able to provide information of the physical location of the caller to emergency services for the emergency call made via the Cloud Voice or Cloud Video Service. Customer must advise his/her physical location to emergency services during the emergency call.
- 2.15 Customer acknowledges and agrees that Cloud Voice or Cloud Video Service is unable to directly connect to any Hong Kong emergency services when being used outside Hong Kong. HKBNES will not be liable whatsoever for any losses, damages or expenses suffered or incurred by Customer.
- 2.16 Cloud Voice or Cloud Video Service is not intended for use with lifeline devices. Customer shall undertake with HKBNES that Cloud Voice or Cloud Video Service will not be used by any lifeline user and no medical alarm or other lifeline device will be connected to Cloud Voice or Cloud Video Service. In case of breach of the above term, HKBNES may terminate the Cloud Voice or Cloud Video Service.
- 2.17 Customer may register for IDD001/002/007 service on the Cloud Voice Service. If Customer uses IDD001/002/007 to make outgoing calls to any non-Hong Kong numbers, call charge will be incurred and he/she will be charged based on the respective IDD001/002/007 rate plan. For the IDD001/002/007 tariffs, please refer to the HKBNES’s official website www.hkbnes.net or contact the Customer Services Department at cc@hkbn.com.hk
- 2.18 IDD001/002/007 calls are charged on a per-minute basis and rounded up to nearest 10 cents in Hong Kong Dollars.

The following clauses 2.19 to 2.23 shall only apply to Cloud Protect Service:

- 2.19 The Cloud Protect Service is only available to HKBNES Business Broadband Single User Plan, Standard Plan and Premium Plan; Internet Highway Standard Plan and Premium Plan.
- 2.20 The Cloud Protect Service does not support DIA, 1Gbps Business Broadband Services or 1Gbps Internet Highway Service.
- 2.21 Pro+ Plan is applicable to HKBNES Business Broadband Premium Plan and Internet Highway Premium Plan only.
- 2.22 Policy reconfiguration is not applicable to Smart Plan.
- 2.23 Minimum subscription period for the Cloud Protect Service is twenty-four (24) months unless otherwise specified in the Tariff or as stated on the Application. Customer shall on

demand pay for the monthly charges for the remaining contract period in the event of termination before expiration of the minimum subscription period.

The following clause 2.24 shall apply to bConnect, bMeeting, Cloud Doc:brary, Cloud Signage and Cloud Surveillance Services:

- 2.24 Minimum subscription period for the bConnect, bMeeting, Cloud Doc:brary, Cloud Signage and Cloud Surveillance Services are twelve (12) months respectively unless otherwise specified in the Tariff or as stated on the Application. Customer shall on demand pay for the monthly charges for the remaining contract period in the event of termination before expiration of the minimum subscription period.
- 2.25 HKBNES does not assume any responsibility in respect of the collection, storage or other processing of any personal data in the course of using the Service by the Customer. HKBNES does not have any control over the contents of the recordings, and will not access, disclose or in any way tamper with any data therein except for compliance with requests by courts, law enforcement agencies or as required by laws. Customer further acknowledges that it is Customer’s obligation to regularly download the recordings from the server assigned to Customer for storage and HKBNES disclaims all liabilities in respect of any loss of such data or any damage arising from or incidental to the use of such data. HKBNES will delete the recordings which are beyond the relevant retention period without notifying the customer. Neither HKBNES nor its content service provider guarantee the accuracy or reliability of the Service, information or content so provided and accept no liability (whether in tort or contract or otherwise) for any loss or damage arising from the Service or any inaccuracy or omission of information.

3. Intellectual Property Rights

- 3.1 Customer shall ensure that it has the rights to use the Customer Content.
- 3.2 All Software is owned by HKBNES and/or its third party software partners. Any rights to use the Software granted to Customer are non-transferable, non-exclusive and in object code form only. Customer shall use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software.
- 3.3 Customer will not acquire any proprietary or intellectual property rights to the Software (or modifications), documentation, or any copyrights, patents, trademarks or any other intellectual property embodied or used in connection therewith, except for the rights to use expressly granted in the Contract. Customer shall not have any title to or ownership of the Software (or modifications thereto). Customer shall not remove or alter any copyright or proprietary notice from copies of the Software.
- 3.4 Customer shall not, or through any of its affiliates, agent or third party:
 - (a) copy the Software except as expressly allowed under the Contract;
 - (b) reverse engineer, decompile or disassemble the Software;
 - (c) sell, lease, license, sub-license, modify, time share, outsource, or otherwise use or transfer the Software or the documentation to any third party;
 - (d) create derivative works based upon the Software; or

- (e) alter or attempt to change the settings on the Software products or rights of use intellectual property on the Software.

4. Third Party Software

The use of Third Party Software is subject to such licence terms as specified by the owner of the Third Party Software. Customer shall acknowledge acceptance and comply with the licence terms of such Third Party Software. Customer shall execute such document as required by HKBNES to acknowledge acceptance of such Third Party Software licence terms.

5. Acceptable Use Policy

5.1 Customer shall, and shall ensure Users:

- (a) keep the User log-ins and passwords that are used to access the Services confidential and stored securely;
- (b) be responsible and liable for all interaction with the Services in connection with the login details;
- (c) protect all their data from unauthorized access or attack and that they are properly backed up;
- (d) use up to date anti-virus software at all times (including for Trojan horses and worms);
- (e) remove or quarantine any Customer Content that is corrupted with malicious code or harmful to the Services;
- (f) comply with best practices for security measures;
- (g) comply with all applicable laws, rules, regulations, industry standards and codes;
- (h) ascertain all materials are not subject to any third-party rights or have obtained written permission from applicable rights holders before using, distributing, modifying or reproducing those materials; and
- (i) comply with such guidelines or directions issued by HKBNES for the Services.

5.2 Customer shall not, and shall ensure Users shall not, use the Services:

- (a) for any illegal, abusive, fraudulent activities;
- (b) to store or transmit any virus, code, file or program that is harmful or invasive;
- (c) to unlawfully distribute or transmit unsolicited mass e-mail or other messages or promotions;
- (d) in connection with an open mail relay;
- (e) in any way that infringes on or misappropriates the intellectual property rights or proprietary rights of any third party;
- (f) to publish or transmit any material that is defamatory, obscene or could cause offence or harm;
- (g) in any way which the Services are not intended or designed for;
- (h) in any way that interferes with the efficiency or security of the Services;
- (i) in a way such that usage of resources in the Services is disproportionate or otherwise affect other users of FibreCloud Service or the overall performance of FibreCloud Service; or
- (j) to export, re-export, transfer, or make available to anyone, whether directly or indirectly, regulated item or information without first complying with applicable export control laws and regulations which may be imposed by any government within whose jurisdiction Customer operates.

6. Indemnity

Customer shall indemnify HKBNES and its agents, contractors, sub-contractors, third party equipment vendors

and third party service providers or/and affiliates (“the Indemnified”) against any actions or claims (including third party claims), loss, damage, expense (including legal costs on solicitor and client basis) suffered or incurred by any of the Indemnified due to:

- (a) any breach by Customer or User of any terms under the Contract including these special terms and conditions and AUP;
- (b) the provision of the Services to Customer except to the extent such loss is due to HKBNES’s intentional default or gross negligence;
- (c) Customer Content, including any third party claiming any interests in Customer Content, any claims arising from any alleged illegal act, claims for defamation, infringement of intellectual property rights, damage to cloud infrastructures and respective data, loss of data or distribution of obscene or offensive material; and
- (d) any software virus introduced by Customer or User.

7. Consequences of Termination

On termination of the Services, Customer shall:

- (a) no longer have rights to access to the Services or use the Services. At Customer’s request and for a period of up to 14 days from the date of termination of Services, HKBNES will make available to Customer the Customer Content as existing in the Services on the date of termination. At the end of such 14 days period, and except as may be required by law, HKBNES will delete or otherwise render inaccessible any of the Customer Content that remain in the Services. For Cloud Signage, Cloud Recording and Cloud Surveillance Services, the Customer Content will no longer be available immediately upon the date of termination;
- (b) de-install the Software from any Services upon which they have been installed; and
- (c) destroy the media and all documentation associated with the Software promptly upon the written request of HKBNES and certify in writing to HKBNES (or its Software licensors if HKBNES so directs) that the Software have been de-installed and the media and all documentation have been destroyed, if so requested by HKBNES.

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