

## HKBN ENTERPRISE SOLUTIONS HK LIMITED TERMS AND CONDITIONS FOR MAINTENANCE OF EQUIPMENT

### 1. Introduction

The following terms and conditions apply to the maintenance of Equipment by HKBN Enterprise Solutions HK Limited ("HKBNES").

### 2. Definitions

**"Agreement"** means the Order Form and these terms and conditions.

**"Charges"** means fees and charges payable by the Customer to HKBNES as set out in the Order Form.

**"Customer"** means the entity referred to as such as set out in the Order Form.

**"Equipment"** means the equipment upon which Maintenance Services are to be provided by HKBNES in accordance with the Order Form.

**"Force Majeure"** means an event beyond the reasonable control of HKBNES, including accident, fire, flood, lightning, equipment failure, computer software malfunction or design defect, power failure, war, acts of God, civil commotion, strikes, labour disputes, freight embargoes, acts of any government, quasi-government or public or military authority, terrorism, epidemic or pandemic, telecommunication line or submarine cable failure.

**"Intellectual Property Rights"** means rights in patents (including utility models), designs, chip topographies, copyright, trade marks or trade names, trade secret, know-how and other technical information, whether registered or not.

**"Maintenance Services"** means the maintenance services procured by the Customer and to be performed by HKBNES as specified in the Order Form.

**"Monthly Maintenance Charge"** means recurrent monthly charge for the Maintenance Services.

**"One-Off Charge"** means a fixed one-off charge.

**"Order Form"** means HKBNES's order confirmation form signed by the Customer and accepted by HKBNES.

### 3. Maintenance Services

3.1 Subject to these terms and conditions and the Order Form, HKBNES will provide preventative maintenance namely inspection, lubrication and adjustment to assure the proper functioning of the Equipment at such frequency ("Preventative Maintenance") and for such duration as HKBNES deems necessary, and on-call maintenance service to maintain the Equipment in operating condition while location at the address specified in the Agreement ("On-call Maintenance").

3.2 Unless otherwise agreed in writing, HKBNES will carry out the Preventative Maintenance and/or On-call Maintenance Services (as the case may be) between 9 a.m. and 5 p.m., Monday to Friday, excluding public holidays ("Maintenance Period"). If at the Customer's request or in emergency, HKBNES carries out any investigation or work outside the Maintenance Period, HKBNES will impose, and the Customer shall pay, an extra charge at the rate prevailing for the time being as set out in HKBNES's standard charges. Work performed outside the Maintenance Period is subject to a two (2) hour minimum plus cost of travel when work begins and/or terminates outside the Maintenance Period.

3.3 HKBNES may, upon 30 days prior written request by the Customer, extend the period during which the Preventative Maintenance and/or On-call Maintenance services (as the case may be) will be available outside the Maintenance Period, provided that the periods included in any such extended period of maintenance shall be consecutive, of uniform incidence, and

shall immediately precede and/or follow the Maintenance Period ("Extended Maintenance Period"). The Customer shall follow the procedures and pay HKBNES additional charges applicable to the Extended Maintenance Period, at the prevailing charges and procedures of HKBNES.

3.4 Upon 30 days prior written request by the Customer any Extended Maintenance Period then in force may be modified, subject to appropriate adjustment of Charges according to HKBNES's standard charges.

3.5 Reference to the Maintenance Period shall include any Extended Maintenance Period request and as modified.

3.6 HKBNES may perform, or cause to be performed, at the Customer's expense, such necessary testing as it deems necessary to assure proper air conditioning, air particle content, grounding and proper condition of electrical power. HKBNES will submit a written report of such tests to the Customer including recommendations to assure proper operation of the Equipment. The Customer agrees to make such changes at its expense within 14 days. HKBNES may change site specifications without notice as new technology or information becomes available.

3.7 All parts supplied by HKBNES in performing Maintenance Services will be new or of "as-new" quality. Replaced parts shall become the property of HKBNES.

3.8 By written agreement of the parties, Equipment may be added to or removed from the Maintenance Services, subject to such adjustments to Charges as HKBNES considers appropriate.

3.9 The Customer shall maintain accurate and current logs and records concerning the operation of the Equipment.

### 4. Charges and Payment Terms

4.1 Unless otherwise stated in the Order Form, the Customer shall pay HKBNES the Charges (one-off and/or recurring) within 30 days of the date of invoice from HKBNES. Payment shall be in Hong Kong dollars unless otherwise agreed in writing.

4.2 In the event of default in payments, the Customer shall pay to HKBNES interest on the amount in arrears at the rate of 2% per month from the date when the same became due for payment until paid, provided always that nothing in this clause shall affect the rights of HKBNES under the law or the Agreement.

4.3 Monthly Maintenance Charge and One-Off Charge do not cover the cost of the following items which shall be borne by the Customer:

- (a) Electrical work external to the Equipment;
- (b) Changes or alterations in specifications;
- (c) Consumable items, furnishing accessories or supplies, painting or refinishing the Equipment, or furnishing materials therefor;
- (d) Installation, moving or removing of Equipment, devices or attachments;
- (e) Maintenance of accessories, attachments, machines, or other devices not furnished by HKBNES;
- (f) Repairs made necessary by accident, misuse; fault; normal wear and tear or negligence of the Customer, its employees or invitees;

(g) Repairs made necessary to causes not inherent in the Equipment such as, but not limited to, failures due to failure or fluctuation of electrical power, improper grounding of the electrical supply, excessive foreign object particles in the Equipment area, excessive humidity including off hours and the effects thereof, air-conditioning, casualty, vandalism or by any causes other than normal use;

(h) Faults on Equipment discovered upon initial inspection of the Equipment carried out immediately after signing the Agreement;

(i) Data migration or restoration or firmware upgrade; or

(j) Rebuilding or overhauling of Equipment.

HKBNES's determination as to whether any item falls within the above exclusions shall be final and binding upon the Customer.

4.4 Unless otherwise stated in the Agreement:

(a) Payment of Charges shall commence from the effective date of the Agreement;

(b) Monthly Maintenance Charge shall be payable monthly in advance;

(c) One-Off Charge shall be payable upon the signing of the Order Form by the Customer; and

(d) All other Charges under the Agreement shall be billed by HKBNES at its option, as incurred by or for the Customer or at a later date, and shall be payable within 30 days from the date of invoice.

4.5 HKBNES may increase the Monthly Maintenance Charge at any time by giving 30 days' notice to the Customer after the agreed minimum term of the Maintenance Services (as stated in the Order Form, if any) by such sum as it deems necessary to cover any increase in the costs of provision of maintenance. HKBNES may revise any of its standard Charges for Maintenance Services at any time without notice.

4.6 All Charges and any other amounts payable by the Customer under the Agreement 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 provision of the Maintenance Services ("Taxes"). The Customer shall pay and be solely responsible for any and all Taxes. The Customer shall not deduct any Taxes from any payments due to HKBNES.

## 5. Access and Working Facilities

5.1 The Customer shall, at its own cost, allow employees, contractors or agents of HKBNES full access to the Equipment at all reasonable times including liaison, co-ordination with and/or submission of application to electricity supplier, building management office, nominated contractors, government departments or any other third party to allow HKBNES'S employees, contractors or agents to access the Equipment.

5.2 The Customer shall provide at its expense, for the purposes of the Maintenance Services personnel, adequate working space within a reasonable distance of the Equipment. Such space shall provide suitable working facilities and working areas, adequate light, heat and ventilation as well as suitable electric current and outlets for testing purposes. The Customer shall also provide within reasonable distance of the Equipment adequate facilities for storage and safekeeping of tools, test equipment, and spare parts. Such working and storage space shall be sufficient in area to permit unhampered service of the Equipment and shall be in accordance with the reasonable requirement specified by HKBNES.

## 6. Equipment Not Covered

6.1 HKBNES may connect or disconnect any equipment not covered by the Agreement when carrying out Maintenance Services. If any Equipment is found to be functioning normally by established diagnostics and procedures, HKBNES has no

responsibility or liability to assure or warrant that the non-covered equipment functions in any manner whatsoever.

6.2 HKBNES shall not be liable for any damage whatsoever in respect of, or resulting directly or indirectly from, connecting or disconnecting equipment not covered by the Agreement to the Equipment hereunder, and the Customer shall indemnify HKBNES against all claims and demands, actions and proceedings made upon HKBNES in respect of any damage to any person or property caused by, or through, or in any way owing to such connection or disconnection as aforesaid.

## 7. Relocation of Equipment

7.1 HKBNES will, upon 30 days prior written request by the Customer and subject to payment of charges by the Customer to HKBNES, do the following:-

(a) un-install and prepare the Equipment for packing,

(b) supervise the proper packing of the Equipment,

(c) supervise the unpacking of the Equipment at the new site,

(d) re-install the Equipment at the new site, and

(e) repair damages, if any, suffered in the move, at the Customer's expense, for time and material.

7.2 The Customer shall not move any item of the Equipment from its location as specified in the Agreement unless prior written notice is given to HKBNES. Provided that such notice may be given on the terms that Customer shall be responsible for all loss or damage to the Equipment while in transit including the cost of repairing and of running diagnostics and acceptance tests.

7.3 HKBNES may increase Charges for Maintenance Services if any item of the Equipment is moved to a new location which increases the cost of servicing the Equipment for any reason whatsoever.

## 8. Termination

8.1 HKBNES may terminate the Agreement if:

(a) HKBNES ceases to provide that Maintenance Services on a commercial basis by giving Customer 30 days written notice;

(b) The Customer, upon 5 days written notice, fails to make any payments due or to perform any other obligations required to be performed by the Customer under the Agreement;

(c) The Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or composition with the creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed; or

(d) The Customer is in material breach of the Agreement and fails to remedy such breach within 30 days from receipt of notice from HKBNES specifying the breach.

8.2 Notwithstanding the foregoing, upon not less than 6 months notice to the Customer, HKBNES may terminate the Agreement in respect of any item of the Equipment which is obsolete or unmaintainable subject to such adjustment to Charges as HKBNES shall considers appropriate.

8.3 HKBNES may recover against the Customer in any court of competent jurisdiction any Charges due and 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 or all of the Charges due and payable to HKBNES.

8.4 Termination of the Agreement is without prejudice to any rights, liabilities or obligations of HKBNES, which have accrued up to the date of termination, including an obligation to pay any accrued Charges.

## 9. Exclusions and Limitation of Liability

9.1 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 its employees or agents or contractors or suppliers shall be limited to, at the sole discretion of HKBNES, the supply or re-supply of the Maintenance Services (as the case may be) or refund such amount as received by HKBNES from the Customer for the Maintenance Services (as the case may be).

9.2 Under no circumstances shall HKBNES, its employees, agents or contractors or suppliers be liable in any way whatsoever to the Customer or any other person for any special, indirect or consequential losses or damages, loss of profit, loss of business, loss of revenue, loss of goodwill, loss of use or damage of data or loss of anticipated savings, whether such losses or damages were within the contemplation of the parties.

9.3 Notwithstanding anything else in the Agreement, the Customer shall indemnify, defend and hold HKBNES, its employees and agents harmless against any and all claims, liability incurred, losses, damages, costs and expenses arising from or in connection with:

- (a) Any fraud, illegality or unauthorized use of the Equipment by any person;
- (b) Any claims or proceedings brought by third parties against HKBNES in respect of, or arising from the use of the Equipment by the Customer;
- (c) A breach by the Customer of the Agreement including any acts or omissions (whether or not negligent) of the Customer;
- (d) HKBNES's access to the Customer's premises in connection with any works pursuant to the Agreement; and
- (e) Any failure of the Customer to obtain the appropriate licences, Intellectual Property Rights, or any other permissions required to use the Equipment under maintenance including the right to make any copies or reproductions of any Customer provided software or third party products.

9.4 Except as expressly set forth in the Agreement, all warranties, representations or agreements whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law. Each limitation or exclusion in this clause is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.

9.5 HKBNES shall not be liable to the Customer or any person claiming through the Customer for any defaults or delays caused by a Force Majeure event.

## **10. General Provisions**

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

10.2 Each of the provisions of the Agreement 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.

10.3 The Agreement is 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 arising under the Agreement.

10.4 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 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.

10.5 The Customer shall not assign or transfer any or all of its rights and obligation under the Agreement to any third party. The Customer shall not procure or allow the imposition of any charge, encumbrance or other security interest in relation to Equipment in which HKBNES retains title. HKBNES may at any time assign or transfer any or all of its rights and obligations under the Agreement to any person without the Customer's agreement.

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

## **11. Third Party Rights**

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

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