

HKBN ENTERPRISE SOLUTIONS HK LIMITED
TERMS AND CONDITIONS FOR
OFF-SITE TAPE DELIVERY AND STORAGE SERVICE (“SERVICE”)

- 1 Service details and charges shall be as set out in the relevant Order Confirmation form.
- 2 HKBN Enterprise Solutions HK Limited (“HKBNES”) will store the off-site tapes in a secured vault or cabinet as applicable with 24 hours air-conditioning and environmental control inside Data Centre.
- 3 HKBNES and the Customer will agree on the authorization procedures for the tapes / security cases* pick-up, delivery and retrieval. HKBNES will provide a monthly record to reconcile the tape / security case* inventory to the Customer.
- 4 In the event that the Service is terminated prior to the expiry of the term of the Order Confirmation, the Customer shall pay HKBNES all the remaining monthly charges for the Service for the remaining unexpired term of the Order Confirmation.
- 5 HKBNES may terminate the Service, by written notice to the Customer, if the Customer commits a material breach which is not remedied within ten (10) days after written notice from HKBNES requiring that the breach be remedied; or commits an act of bankruptcy or insolvency, is placed into liquidation or receivership, passes a resolution for its winding up (otherwise than for the purpose of amalgamation or reconstruction) or makes any assignment or arrangement for the benefit of its creditors.
- 6 At any time during the term of the Order Confirmation, HKBNES shall be entitled to, by giving three (3) months prior written notice to the Customer, and at HKBNES’s own expense, change the location of the Site 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.
- 7 Notwithstanding anything to the contrary in the Order Confirmation and terms and conditions contained herein, HKBNES may terminate the Order Confirmation upon giving three (3) months prior written notice to the Customer in the event that any part of the building where the Site is situate becomes or will become unavailable due to redevelopment, demolition, renovation, refurbishment or otherwise, without any liability to the Customer.
- 8 HKBNES may revise the monthly charge by giving the Customer not less than 30 days written notice prior to the expiry of the Order Confirmation. The monthly charge will be increased each year on the anniversary date of this Order Confirmation 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 monthly charge in February 2012 will be calculated as follows:
Revised monthly charge = current monthly charge x (A/B)
Where,
A = the Composite CPI published by CSD for 31 December 2011
B = the Composite CPI published by CSD for 31 December 2010
No adjustment will be made if A is less than B.
- 9 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 of HKBNES in relation to the Service shall be limited to the supply or re-supply of the Service; and in the case of personal injury to or death of any person - unlimited. Notwithstanding the foregoing HKBNES shall not be held liable for the loss, damage, delay, non-delivery or mis-delivery of any tapes delivered or to be delivered pursuant to the Service. The Customer shall take out appropriate insurance against the loss or damage of the tapes to be delivered pursuant to the Service. 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 loss or damage whatsoever; any loss of business, goodwill, anticipated savings, revenue or profits; or any loss or corruption or destruction of data, whether HKBNES was advised in advance of the possibility of such loss or damage.
- 10 Except as expressly set forth herein all express or implied conditions, representations and warranties whether oral or in writing including any implied warranties or conditions of merchantability, fitness for a particular purpose, satisfactory quality, design or quality, against infringement or arising from a course of dealing, usage, or trade practice, are expressly excluded to the maximum extent permitted by law.
- 11 Each limitation or exclusion herein 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.
- 12 HKBNES shall not be in default if and to the extent that any failure or delay in performance of the Service is due to any event beyond the reasonable control of HKBNES, including but not limited to fire, flood, power failure, war, acts of God, civil commotion, strikes, labour disputes, freight embargoes, acts of any government, quasi-government or public or military authority (“Force Majeure”). On the occurrence of a Force Majeure event, HKBNES shall be excused from the performance of its obligations, which are affected by the Force Majeure event and the time for performance of such obligations shall be extended for and during the period of the Force Majeure Event.
- 13 Each party will keep confidential any information acquired during the provision of the Service and will not disclose the same without the prior consent of the other party except for information which is: in the public domain otherwise than by breach; in the possession of the receiving party before divulgences as aforesaid; lawfully obtained from a third party who is free to divulge the same; or required to be disclosed by law provided that the party making the disclosure shall provide the other party with reasonable prior notice before making the disclosure to enable that other party to seek a protective order or other appropriate remedy.
- 14 HKBNES and the Customer shall only divulge confidential information to those employees, officers, directors, agents, professional advisers, and any sub-contractors on a need-to-know basis and shall ensure that such persons or individuals are aware of and comply with these obligations as to confidentiality.
- 15 The terms and conditions set out herein and the Order Confirmation represent the entire agreement between the parties and shall supersede all representations, promises and proposals, whether they are oral or written.
- 16 No amendment to the terms and conditions set out herein and the Order Confirmation shall be of any force and effect unless in writing and signed by authorised representatives of the parties.
- 17 The Customer shall not assign, transfer or dispose of any of its rights and/or obligations herein without the written consent of the HKBNES. HKBNES may assign, transfer or dispose if its right and obligation herein without the consent of the Customer.
- 18 No delay, neglect, failure by a party to exercise a right, delay in exercising that right or forbearance on the part of either party in enforcing against the other party any terms or conditions herein shall either be or be deemed to be a waiver or in any way prejudice any right of that party herein.
- 19 HKBNES may sub-contract the whole or any part of its obligations to a third party provided that HKBNES shall remain responsible for all obligations and acts or omissions of the subcontractors.
- 20 Any claims or disputes herein shall be construed in accordance with the laws of Hong Kong SAR and the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of Hong Kong SAR.
- 21 The Contracts (Rights of Third Parties) Ordinance (Cap. 623) shall not apply to the Order Confirmation. For clarity, a person who is not a party to the Order Confirmation shall have no right to enforce the Order Confirmation.