

General Terms & Conditions for HPC

These Terms are binding on each user of HPC (“User”) and may be updated, revised, or supplemented by HKSTP at any time.

The latest version of the Terms can be found at <https://sp.hkstp.org/support/terms>.

Registration

In order to become a User, an applicant is required to complete and submit a registration form (“Registration”) to HKSTP for its approval in its absolute discretion. Once the Registration is approved, such applicant will become a User.

For the avoidance of doubt, HKSTP has the right to reject any Registration in its absolute discretion without the need to provide any reasons.

1 DEFINITIONS AND INTERPRETATION

1.1 In the Terms, including the Recitals, unless otherwise expressed or required by the context, the following expressions shall have the respective meanings set opposite thereto:-

<u>Expression</u>	<u>Meaning</u>
"Confidential Information"	means all business, technical, financial or other information communicated or made known to the User by HKSTP;
"Content"	means all data, text, graphics, logos, photographs, images, moving images, sound, illustrations, software and other material featured, displayed, stored, uploaded or used by the User to or in HPC;
"End Users"	means all end users assessing HPC through the HPC account of the respective User including without limitation such User's employees and agents who have access to the HPC through its HPC account;
"HPC"	High-Performance Computing (HPC) services refer to the provision of specialized computing resources and infrastructure specifically designed to perform complex and data-intensive computational tasks at high speeds. HPC services are intended for tasks that require significant computational power, such as simulations, modeling, and large data analyses, which are beyond the capabilities of standard computing solutions;
"Intellectual Property Rights"	means patents, trademarks, design rights, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights or obligations, in each case whether registrable or not in any country;

“IP address”	stands for an internet protocol address;
“Personal Data”	shall have the meanings of “personal data”, “personal information” or the equivalent definitions as defined in the applicable laws including without limitation (1) The Personal Data (Privacy) Ordinance (Cap. 486) of the laws of Hong Kong SAR; (2) General Data Protection Regulations of the laws of European Union; and (3) Personal Information Protection Law of the laws of the PRC China.
“Purposes”	activities related to research and development which shall not be related directly or indirectly to any military or dual-use purposes including without limitation the development, testing, production, training, operations, research, weapon testing, range activities, logistical support and/or deployment of military hardware or software, any other activities that support military operations or capabilities, contribution to the creation, enhancement, or delivery of military systems, weapons, or technology;
“Quotation”	means the contract document entered into by the User for subscribing to HPC and includes these Terms and the SLA;
“SLA”	means the Service Level Agreement for the High-Performance Computing (HPC) Platform, as amended by HKSTP from time to time;
“Terms”	Terms and conditions being set out herein which shall expressly include all amendments made by HKSTP from time to time;
"Virus"	means a computer program that copies itself or is copied to other storage media including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programmes commonly referred to as "worms", "Trojan Horses", "logic bombs" and "cancelbots"

- 1.2 The expression "the User" shall, where the context permits, include its respective End Users, executors, agent, administrators, successors, employees, users of HPC under the User’s account and permitted assigns.
- 1.3 The terms “legal” or “lawful” shall be interpreted as relating to any and all applicable international, national and local laws (including regulations and binding judicial law) as amended, extended, repealed and replaced, or re-enacted.
- 1.4 The headings to the Clauses of the Terms are for ease of reference only and shall be ignored in interpreting the Terms.
- 1.5 Unless the context otherwise requires, words and expressions in the singular include the plural and *vice versa* and words denote any gender shall include all genders.

- 1.6 Unless the context otherwise requires, references to a person include any public body and anybody of persons, corporate or un-incorporate.

2 DUTIES AND RESPONSIBILITIES

- 2.1 HKSTP itself or through its agents shall provide HPC for the Purposes in accordance with the Terms.
- 2.2 The User shall use, access, or control HPC for the Purposes only, which must be legitimate and lawful, and in accordance with the Terms.
- 2.3 The User is required to ensure that (1) the Content; (2) any activities carried out on or in relation to HPC will not violate any Terms or any applicable law. The User is solely responsible for the development, creation, operation, maintenance, and use of the Content.
- 2.4 The User will secure and maintain all rights in the Content necessary for HKSTP to provide HPC to the User without violating the rights of any third party or otherwise obligating HKSTP to the User or to any third party. HKSTP does not and will not assume any obligations with respect to the Content or to the User's use of HPC other than as expressly set forth in the Terms.
- 2.5 The User is fully responsible for taking appropriate action to secure, protect and backup all Content in a manner that will provide appropriate security and protection, which may include encryption to protect the Content from unauthorized access.
- 2.6 Log-in credentials (such as username and password) is required for access to HPC. Such log-in credentials are for the User's use only and the User undertakes not to sell, transfer, sublicense or otherwise make available such log-in credentials to any other entity or person.
- 2.7 The User is deemed to have taken action that the User permits, assists or facilitates any person or entity (including the End Users) to use any services related to the Terms, the Content or access or use of HPC. The User is responsible for all End Users' actions in relation to the HPC including without limitation their use of the Content, HPC or any other services provided by HKSTP. The User shall ensure that all End Users comply with User's obligations under the Terms. If the User is aware of any violation of its obligations under the Terms caused by any End User, the User shall immediately suspend such End User's access to the Content, HPC and any other services provided by HKSTP.

3 IP ADDRESSES & CONNECTIVITY

- 3.1 The User acknowledges that it has no right, title or interest in the IP address allocated to it, and that any IP address allocated to it is not portable or otherwise transferable by the User in any manner whatsoever.
- 3.2 The User is required and solely responsible to obtain a reliable internet connection with adequate bandwidth and computer system for the purpose of assessing HPC. In addition, the User is required to deploy adequate security and protection measurements for the

purpose of protecting HPC and computer network connected to HPC which shall include without limitation firewall, restrictions on accessing HPC and other appropriate computer network security measurements.

4 SOFTWARE LICENCE AND RIGHTS

4.1 The User grants to HKSTP a royalty-free, worldwide, non-exclusive licence to use the Content for the purpose of discharging its obligations under the Terms.

4.2 The User agrees that it will not itself, or through any agent or other third party:

4.2.1 make copy of any Confidential Information of HKSTP except as expressly permitted under the Terms or by law; and

4.2.2 sell, lease, license or sublicense any Confidential Information of HKSTP; or

4.2.3 use any Confidential Information of HKSTP except as expressly permitted under the Terms.

5 CONTENT AND DATA

5.1 HKSTP will allow the User to access HPC online for the purpose of uploading content to HPC and the User shall take full responsibility of uploading, storing, processing, and handling the Content. For the avoidance of doubt, HKSTP shall not be responsible or liable for any damages of or caused by any part of the Content.

5.2 Without prejudice to the generality of other provisions of the Terms, each User is fully responsible for all activities (including all activities of its End Users) that occur in or in relation to HPC.

5.3 The User shall not upload, store, use, process or distribute Content that:

5.3.1 infringes any Intellectual Property Rights;

5.3.2 is in breach of any law, statute, or regulation;

5.3.3 is defamatory, libellous, unlawfully threatening, politically sensitive or harassing;

5.3.4 is obscene, pornographic or indecent;

5.3.5 contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any personal information; or

5.3.6 is not solicited.

5.4 Without prejudice to the generality of other provisions of the Terms, while HKSTP does not take an active role of storing, processing, uploading or dealing with any of the Content;

however, in the event where it becomes necessary for HKSTP to obtain a license of the Content for the purpose of performing any of its obligations under the Terms, the User grants to HKSTP or undertakes to obtain for HKSTP a non-exclusive, royalty-free licence, during the term of the Quotation, to use, store and maintain the Content on HPC. HKSTP may make such copies as may be necessary to perform its obligations under the Terms, including backup copies of the Content.

- 5.5 HKSTP shall have the right, upon reasonable notice, to access and review any Content for the sole purpose of verifying User's compliance with this Agreement, applicable laws and HKSTP policies. HKSTP shall treat any such accessed Content as confidential and shall limit access to HKSTP personnel who have a need-to-know for the purpose of verifying compliance.
- 5.6 HKSTP shall have the right to remove or delete any Content from HPC without notice and in such event, the User will not be compensated whatsoever. Each User shall backup the Content on a regular basis.
- 5.7 Each User is responsible for removing and deleting all Content from HPC upon termination of the Quotation (for whatever reasons). If User fails to do so, HKSTP may exercise its right pursuant to Clause 5.5 and additionally charge a fee equivalent to the value of a month of HPC subscription.
- 5.8 In the event that HKSTP receives any complaint by or from any third party or is threatened with the institution of legal proceedings by any third party in relation to HPC, the Content or other materials provided by the User and any activity of the User carried out or in relation to HPC, HKSTP shall at its sole discretion remove any Content or other materials stored at or uploaded to HPC until the third party withdraws the complaint or at a time as HKSTP may determine appropriate at its absolute discretion. In this regard, the User will not be compensated whatsoever.

6 RIGHTS OF HKSTP

- 6.1 Subject to the User's consent and imposition of any other conditions, HKSTP may request the User to grant HKSTP the right/license to use the User's logo and company name for promotional purpose including on HKSTP's website, leaflet, poster, eDM and social media without costs.
- 6.2 HKSTP shall have the right to retain and study the User's usage patterns and behaviors in relation to HPC which shall include without limitation (i) duration and frequency of HPC use; (ii) common paths and user flow within HPC; (iii) most viewed or utilized content or tools; (iv) upload times; (v) diagnostic data; (vi) user's activity logs. For the avoidance of doubt, HKSTP shall have the right to retain all corresponding information for as long as it sees fit.

7 FEES, BILLING & PAYMENT

- 7.1 HKSTP offers two subscription models for HPC: (a) prepayment – whereby a User pays the subscription fees in full immediately upon completion of Registration and (b) periodic billing – whereby HKSTP issues an invoice to a User for settlement periodically. The fees, period and model that a User has subscribed to are set out in the Quotation. Clauses 7.2 to 7.4 below only

applies to a User subscribed to the periodic billing model.

- 7.2 Unless otherwise set out in the Quotation, HKSTP shall bill the User on a monthly in-advance basis. A User shall settle any validly rendered bill or invoice within 30 days of its date of issuance.
- 7.3 Any amount due and not paid in full by the User shall bear interest at the rate of 2% above the Hong Kong dollar best lending rate as quoted by The Hongkong and Shanghai Banking Corporation Limited (HSBC Hong Kong). HKSTP reserves the right to suspend any or all services to delinquent accounts until such time as the account is brought current and User shall have no claim against HKSTP for any service interruption arising from any payment delay.
- 7.4 The User may terminate the Quotation at any time prior to the expiration of the subscribed period by providing written notice to the Company. In the event of such early termination, the User shall pay the Company a termination fee equal to the remaining subscription fees that would have been payable for the subscribed term had the Quotation not been terminated early. Upon receipt of the termination fee, the Company shall promptly cease providing HPC to the User, and the Quotation shall be deemed terminated.

8 **PERSONAL DATA**

- 8.1 The User undertakes it will not upload, store or process any Personal Data in or through HPC. For the avoidance of doubt, the Content shall contain no Personal Data.
- 8.2 The User also represents and warrants that it has already obtained all necessary consents for any Personal Data disclosed to HKSTP in relation to HPC.

9 **WARRANTIES AND REPRESENTATIONS**

- 9.1 The User agrees, warrants and represents to HKSTP that:
 - 9.1.1 all information provided to HKSTP (including information in the respective Registration) is complete, correct and truthful;
 - 9.1.2 it has the full right, power and authority to enter into and perform all its obligations under the Terms;
 - 9.1.3 it will comply with all applicable laws in relation to its use of the HPC, including but not limited to U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments;
 - 9.1.4 it will not use HPC for any illegal, unlawful, immoral, or improper purposes;
 - 9.1.5 all Content will be legal and lawful and will comply with any law, regulations or code;
 - 9.1.6 nothing contained within the Content is Personal Data, obscene, offensive or defamatory against any person or would give rise to any claim (whether in contract, tort or otherwise) by any person or entities or otherwise illegal;

- 9.1.7 where necessary, HKSTP's use of the Content in accordance with the Terms will not infringe any Intellectual Property Rights of any third party in Hong Kong;
- 9.1.8 it has the right, power and authority to license the Content to HKSTP as set out in Clause 5.4; and
- 9.1.9 it and its licensors own all right, title, and interest in and to the Content. It has all rights in the Content necessary to grant the rights contemplated by the Terms.
- 9.1.10 it is solely responsible for setting up, managing, and maintaining the confidentiality and security of all passwords and other authentication details associated with its HPC account including without limitation any URLs/links for the access of software installed by the respective User ("User Software"). It shall implement strong password practices and take all reasonable steps to prevent unauthorized access to its HPC account and User Software. HKSTP shall not be responsible or liable for any loss, damage, or unauthorized activity arising from or in connection with its failure to safeguard its passwords or other authentication details.

- 9.2 HKSTP warrants the HPC will meet the terms of the SLA. The User's sole remedy for breach of this warranty is contained in the SLA.
- 9.3 Save as expressly set out in the Terms (if any), all HKSTP's representations, warranties, terms and conditions whether oral or written, express or implied by law, custom, statute or otherwise and including but not limited to satisfactory quality or fitness for any particular purpose are excluded.

10 **CONFIDENTIALITY**

10.1 The User:

- 10.1.1 may not use any Confidential Information for any purpose other than the performance of its obligations under the Terms;
- 10.1.2 may not disclose any Confidential Information to any person except with the prior written consent of the HKSTP; and
- 10.1.3 shall make every effort to secure and prevent the use or disclosure of the Confidential Information.

10.2 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information that:

- 10.2.1 is in the possession of and is at the free disposal of the User or is published or is otherwise in the public domain prior to its receipt by the User; or
- 10.2.2 is required to be disclosed by any applicable law or regulation.

- 10.3 Without prejudice to any other rights or remedies HKSTP may have, the User acknowledges and agrees that in the event of breach of this Clause HKSTP shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which it may be entitled.

11 LIMITATION OF LIABILITY

- 11.1 HKSTP and the Indemnified Persons (defined below) shall not be liable to the User or any third parties for any indirect or consequential, incidental, punitive or exemplary loss or damage whether foreseeable or not or however caused, whether arising in tort, from its negligence, its breach of contract, or its breach of statutory duty, under any indemnity or however so caused.
- 11.2 The Indemnified Persons shall have the benefit of the rights, exclusions and limitations of the provisions in this clause 11 as if such provisions were expressly for the benefit of each of them. To the extent of this clause 11, HKSTP is setting out the Terms agreement not only on its own behalf, but also as agent and trustee for such employees, agents, officers, directors, contractors, sub-contractors and affiliated companies.
- 11.3 For the avoidance of doubt, HKSTP hereby declares and the User acknowledges that provision of HPC and/or other matters contemplated herein are provided on an “as-is” basis without any kind of warranties (including fitness for any particular purpose). Without prejudice to the generality of other provisions of the Terms, each User hereby expressly waives all its rights to claim loss and damage against HKSTP arising from or incidental to the failure or malfunction of network or equipment not within the sole control of HKSTP or the act, omission or negligence of the agents of HKSTP and other network providers. HKSTP shall have no obligations or liability with respect to any claim arising from output generated by HPC in connection with any Content.
- 11.4 Notwithstanding anything to the contrary, the maximum liability of HKSTP to the User shall be capped at the total amount paid by the User during the six-month period immediately preceding the date the cause of action arose. The corresponding monetary value of any service credit given by HKSTP pursuant to the SLA shall count towards such liability cap. For the avoidance of doubt, if the User has prepaid for the services on an annual basis, the liability cap shall be calculated based on the pro-rated amount for the six-month period, and not the full annual prepaid fee.

12 INDEMNITY

- 12.1 The User shall at its own costs fully and promptly indemnify and keep HKSTP and its agents, contractors, sub-contractors, employees, officers, directors and affiliated companies (collectively “*Indemnified Persons*”) at all times indemnified against any action, liability, cost, claim (including any third party claims), loss, damage, proceeding, costs, expenses (including legal costs on full indemnity basis) of any nature whatsoever suffered or incurred (or may be suffered or incurred) by HKSTP or any Indemnified Persons in any way arising from or in relation to :
- 12.1.1 any claims or proceedings (actual, potential or otherwise) brought and awarded against HKSTP or any of the Indemnified Persons by any third parties (which shall expressly include any End Users for the purpose of this Clause 12) claiming relief or damages against HKSTP or such Indemnified Persons by reason of the User’s

failing to perform or discharge any of its duties, obligations or liabilities under the Terms;

- 12.1.2 any claims or proceedings (actual, potential or otherwise) brought and awarded against HKSTP or any of the Indemnified Persons by any third parties claiming relief or damages against HKSTP or such Indemnified Persons by reason of any activity carried out by the User or any End Users through HPC; and/or
- 12.1.3 any Content, including but not limited to any third party claiming any interest in any Content, any claims arising from any act alleged to be illegal, claims for defamation, infringement of Intellectual Property Rights, damage of computer databases, loss of data or distribution of obscene or offensive material.

13 **TERM AND TERMINATION**

- 13.1 These Terms shall become effective immediately after the User's acceptance of the Quotation and shall continue unless terminated earlier pursuant to Clauses 7.4 and 13.2.
- 13.2 HKSTP is entitled to cease the provision of HPC and/or other matters contemplated under the Terms with immediate effect after the occurrence of any of the following events without notice:
 - 13.2.1 the User being in breach of any term or condition under the Terms and, if the breach is capable of remedy, failing to remedy the breach within 7 days after receipt of a written notice of the breach and requiring its remedy;
 - 13.2.2 the User passing a resolution for winding up or a court of competent jurisdiction making an order for the User's winding up (other than, in each case, for the purposes of solvent amalgamation or reconstruction where the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the User's obligations under the Terms);
 - 13.2.3 the making of an administration order in relation to the User or the appointment of a receiver over or an encumbrancer taking possession of or selling an asset of the User; or
 - 13.2.4 the User making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.
- 13.3 Termination of the Terms for whatever reason shall not affect:
 - 13.3.1 the accrued rights of HKSTP and liabilities of the User arising in any way out of the Terms as at the date of termination and in particular but without limitation the right to recover damages against the User; or
 - 13.3.2 provisions expressed to survive the Terms, which shall remain in full force and effect.

- 13.4 In addition, HKSTP shall have the right to cease provision of HPC and/or other matters contemplated under the Terms without cause by giving the User 7 days' written notice.
- 13.5 HKSTP shall have the right to delete all Content from HPC without notice and no party shall be entitled to any compensation for such deletion of Content.
- 13.6 Without prejudice to the generality of any provisions herein, the User will not be entitled to any compensation for the cessation/termination of any part of or the entire HPC or any matters contemplated under the Terms.

14 **ASSIGNMENT**

The User shall not assign, transfer, or in any other manner make over to any third party the benefit and/or burden under the Terms without the prior written consent of HKSTP.

15 **WAIVER**

- 15.1 A waiver of any term, provision or condition of the Terms on the part of HKSTP shall be effective only if given in writing and signed by HKSTP and then only in the instance and for the purpose for which it is given.
- 15.2 No failure or delay on the part of HKSTP in exercising any right, power or privilege under the Terms shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.
- 15.3 No breach of any provision of the Terms on the part of the User shall be waived or discharged except with the express written consent of HKSTP.

16 **INVALIDITY AND SEVERABILITY**

- 16.1 If any provision of the Terms is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, whether or not pursuant to any judgment or otherwise:
 - 16.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
 - 16.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision, shall not be affected or impaired in any way.
- 16.2 If any provision of the Terms is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from the Terms and shall be deemed to be deleted from the Terms and the validity of the remaining provisions shall not be affected. If any such deletion materially affects the interpretation of the Terms, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

17 **NOTICES**

- 17.1 Each notice, demand or other communication to be given or made under the Terms by HKSTP to the User shall be in writing and delivered or sent to the email stated in the Quotation.
- 17.2 Each notice, demand or other communication to be given or made under the Terms by the User to HKSTP shall be in writing and delivered or sent to: dsh@hkstp.org
- 17.3 Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if given or made by letter, when actually delivered to the relevant address; and (b) if given or made by e-mail, as the Terms may allow, when dispatched.

18 **ENTIRE AGREEMENT**

The Quotation embody and set forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of the Quotation. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in the Quotation save for any representation made fraudulently.

19 **RELATIONSHIP OF THE PARTIES**

Nothing in the Quotation and no action taken by the parties pursuant to the Quotation shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture, the agents of each other or any other co-operative entity.

20 **GOVERNING LAW AND JURISDICTION**

- 20.1 Any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to the Quotation or its formation, shall be governed by and construed in accordance with the laws of Hong Kong.
- 20.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Hong Kong for the purpose of hearing and determining any suit, action or proceedings and/or settling any disputes arising out of or in connection with the Quotation.

21 **MISCELLANEOUS**

- 21.1 HKSTP reserves the right to cancel or make changes to HPC and/or any matters contemplated herein. In the event that HPC and/or any matters contemplated herein is cancelled or terminated, the User will not be compensated whatsoever.
- 21.2 The User is not permitted to use the names and/or logos of HKSTP in any manner without the prior written consent from HKSTP.
- 21.3 HKSTP reserves the right to refuse anyone's access to HPC and to require any person to cease using HPC if in the sole discretion of HKSTP, that such person (i) fails to comply with

any of the Terms; or (ii) is found to have behaved in an illegal or anti-social manner; or (iii) is found to have violated any of these Terms. The decision of HKSTP in this regard shall be binding and conclusive.

- 21.4 Interpretation of the Quotation is the sole prerogative of HKSTP. All decisions by HKSTP regarding the interpretation of the Quotation and any issues arising from HPC shall be binding and conclusive on the User.

22 NO THIRD PARTY RIGHTS

Unless otherwise expressly provided for in the Quotation, no one other than a party to the Quotation, their successors or permitted assignees have any rights to enforce, or whose consent is required to amend, any terms or conditions of the Terms under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) or otherwise.