

Appendix II

[Sample Waiver Letter for Data Centre Use in Part of an Existing Industrial Building]

BY RECORDED DELIVERY

[name & address of the owner of the Premises]

Dear Sirs,

[address of the Premises] (the "Premises")
[number of undivided share of the Premises] Share[s] of and in
[Lot number] (the "Lot")

I have to inform you that in consideration of your payment to the Government of the Hong Kong Special Administrative Region (the "Government") of an administrative fee amounting to \$[] (the receipt whereof being hereby acknowledged), the Government has approved and I hereby grant on behalf of the Chief Executive a temporary waiver (the "Waiver") of the restriction contained in [the Lease as set out in the Schedule hereto/Special Condition No[s]. [] of the Conditions of [] [as varied or modified by a Modification Letter dated the [] day of [] and registered in the Land Registry by Memorial No. []] (the "[Lease/Conditions]") under which the Lot is held, so as to permit the use of the Premises shown for identification purposes only coloured [pink] on the plan annexed hereto (PLAN No. []) for the purpose of a data centre. For the purpose of the Waiver, the expression "data centre" shall mean a facility for housing computer systems, servers, telecommunications equipment and associated support components in a secure and controlled environment (the "Permitted Purpose"). The support components, depending on scale, comprise electrical and mechanical facilities including but not limited to uninterruptible power supply, power distribution, standby power generation, heat rejection, computer room air-conditioning, fire suppression, environmental control and security control. The Waiver is granted subject to the following terms and conditions:

- (1) You warrant, represent and declare that :-
 - (a) the Premises are situated in a zone designated for use as "Industrial"/"Commercial"/"Other Uses (Business)" according to the statutory town plan; and
 - (b) as at the date of the submission of the application for the Waiver, the age of the building, of which the Premises form part, is not less than 15 years calculated from the date of the latest occupation permit issued by the Building Authority for the said building.

In the event that any of the information contained in sub-clauses (a) and (b) of this Condition is found to be false or misleading, the Government may pursuant to Condition No. (8)(a) hereof forthwith terminate the Waiver by giving to you a written notice to such effect

¹ Insert the Condition numbers of any other Conditions which provide for early termination

² Insert the end date of the Waiver, being the expiration date of the Lease/Conditions.

- (2) Subject to Condition Nos. (1), (4)(b), (8), (10), and (13)¹ hereof, the Waiver shall be for a term commencing from the date of this letter and expiring upon the demolition of the existing building erected on the Lot now known as [] ; (ii) on []² or (iii) upon the early termination of the [Lease/Conditions] before the expiry of its term whether in accordance with the [Lease/Conditions] or otherwise, whichever shall be the earlier (the “Waiver Period”).
- (3) (a) During the Waiver Period, you shall not use the Premises or any part thereof or allow or suffer the same to be used for any purpose other than for the Permitted Purpose.
- (b) The determination of the Director of Lands (the “Director”) as to whether the Premises or any part thereof have been used for the Permitted Purpose shall be final and binding on you.
- (4) (a) Any building works required to be carried out in, to or on the Premises or any part thereof to enable it to be used for the Permitted Purpose shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation.
- (b) You shall procure that all building works required to enable the Premises to be used for the Permitted Purpose shall be completed within three years from the date of this letter. You shall provide documentary proof, to the satisfaction of the Director, of the completion of such building works not later than two calendar months from the expiration of the aforesaid three-year period. Such proof shall be duly certified by an authorized person (as defined in the Buildings Ordinance, any regulations made thereunder and any amending legislation). In the event that such building works have not been completed within the aforesaid three-year period, the Government may forthwith terminate the Waiver by giving to you a written notice to such effect.
- (5) (a) You shall indemnify and keep indemnified the Government, its officers and servants, from and against all actions, costs, claims and demands arising directly or indirectly out of or in connection with the Waiver or the use of the Premises or any part thereof for the Permitted

Purpose.

- (b) The Government shall have no liability in respect of any damage or loss whatsoever caused to you or (as the case may be) any or all of the owners of the Lot or any part thereof or any person arising out of the grant, termination or withdrawal of the Waiver or otherwise (or any combination thereof) and no claim for such damage or loss shall be made against the Government or the Director.
- (6) You shall at your own expense and before the commencement of any building works, provide such information and materials as required by the Commissioner for Transport to demonstrate that the road access, parking, and loading and unloading facilities are adequate to cater for the use of the Premises for the Permitted Purpose and that such shall not impose adverse traffic impact to the road network surrounding the Lot.
- (7) You shall comply in all respects with all Ordinances, bye-laws, rules, regulations or other enactment which are or may at any time be in force in the Hong Kong Special Administrative Region (“Hong Kong”) relating to the use of the Premises or any part thereof for the Permitted Purpose.
- (8)
 - (a) Notwithstanding anything herein contained, in the event (i) of any breach, non-performance or non-observance of any of the terms and conditions herein contained or (ii) that at any time, you use or permit or suffer any part of the Premises to be used for any illegal or immoral purposes or any purposes in breach of any Ordinances, bye-laws, rules, regulations or other enactment in force in Hong Kong, the Government may forthwith terminate the Waiver by giving to you a written notice to such effect;
 - (b) For the purpose of sub-clause (a) of this Condition, the determination of the Director as to whether there is any breach, non-performance or non-observance of the terms and conditions herein contained or whether the Premises are or have been used for any illegal or immoral purposes or any purposes in breach of any Ordinances, bye-laws, rules, regulations or other enactment in force in Hong Kong shall be final and binding on you.
- (9) You shall at your own expense duly obtain all necessary licences, permits, consents, approvals and permissions required from the Government for the use of the Premises for the Permitted Purpose prior to the operation of the Permitted Purpose on the Premises or any part thereof and you shall maintain the same in force and in all respects comply with the terms and conditions thereof.

- (10) If you subsequently wish to revert to the original user of the Lot as set out in the [Lease/Conditions], then upon your application to terminate the Waiver, the Government may terminate the Waiver upon such terms and conditions as it may require.
- (11) Upon the expiration of the Waiver Period or upon the termination of the Waiver, the Premises shall cease to be used for the Permitted Purpose and shall thereafter be subject to all the [provisions, covenants, stipulations, exceptions, reservations, powers and conditions contained in the Lease/General and Special Conditions in the Conditions] including the provisions in respect of the user of the Lot referred to in the [Lease/Conditions]. No part of the administrative fee paid for the Waiver shall be refunded nor shall any compensation whatsoever be paid to you or any owner of the Lot or part thereof or any other person by the Government.
- (12) Nothing contained in this letter shall be construed as a release or any abandonment of the Government's rights to require or insist on compliance with [the terms and covenants of the Lease set out in the Schedule hereto/Special Condition(s) [] of the Conditions] in respect of any subsequent redevelopment of the Lot or any part thereof or any application for modification or variation of the [Lease/Conditions]. The Government will be entitled to charge a premium upon any subsequent redevelopment of the Lot or any part thereof should such redevelopment exceed the development conditions permitted under the [Lease/Conditions] or upon any application for a modification or variation of the terms and conditions of the Lease/Conditions (whether for such redevelopment or otherwise) and, in either case, no account shall be taken of the Waiver and its terms. You hereby expressly agree that any premium assessment in any subsequent modification or variation of the [Lease/Conditions], whether relating to any redevelopment of the Lot or any part thereof or otherwise, shall be based on and made with reference to the user and the terms and covenants set out in the [Lease/Conditions], without taking into account any waiver, permission or terms set out in this letter.
- (13) If the Premises or any part thereof is or is to be resumed by the Government, whether pursuant to an Ordinance or under the terms and conditions of the [Lease/Conditions], the Government may, at any time upon or after the first publication of the notice of resumption or such notice or order of like effect under the relevant Ordinance or (as the case may be) the giving of the notice of resumption under the [Lease/Conditions], terminate the Waiver by giving to you not less than one calendar month's written notice to such effect, such notice to expire at any time and the provisions of Condition No. (13) hereof shall apply to such termination.
- (14) Nothing contained in this letter shall be construed as having any

intention to prevent or effect of preventing any other person from exercising any rights he may have in respect of the user covenant contained in the [Lease/Conditions], or in permitting, inducing or procuring the breach or preventing or hindering the performance of any of your legal or other obligations, statutory, contractual or otherwise, owed to the Government (save the waiver and permission hereby given in respect of the Permitted Purpose) or to any other person.

- (15) Any notice to be served by the Government or its officers under the terms and conditions of the Waiver shall be sufficiently served on you if left addressed to you on the Premises or forwarded to you by post or left at your last known address or at your registered office (as the case may be) and such notice, if sent by post, shall be deemed to be delivered in due course of post at the address to which it is sent.
- (16) Except as hereby temporarily waived all the [provisions, covenants, stipulations, exceptions, reservations, powers and conditions/General and Special Conditions] contained in the [Lease/Conditions] shall remain in full force and effect. The Waiver is not intended to be and shall not be construed as a modification of the terms and conditions contained in the [Lease/Conditions].
- 3 { } Delete if there is no DMC {(17) Nothing contained in this letter shall prejudice any of the rights and remedies of your co-owners under the Deed of Mutual Covenant dated the [] day of [] and registered in the Land Registry by Memorial No. [].}³
- 4 { } Delete if there is no charge/mortgage {(18) Nothing contained in this letter shall prejudice any of the rights and remedies of your [chargee/mortgagee], [*name of the chargee/mortgagee*] (the “[Chargee/Mortgagee]”), under the [*title of the charge/mortgage document*] dated the [] day of [] and registered in the Land Registry by Memorial No. [].}⁴
- (19) The Waiver shall supersede any existing waiver or waiver letter in respect of or relating to the use of the Premises or any part thereof, which shall cease to have any effect from the date of this letter.
- (20) Notwithstanding any other provisions of the Waiver including any provision which purports to confer a benefit on a person who is not a party to the Waiver, the Waiver is not intended to and does not give any person who is not a party to the Waiver any right to enforce any provisions of the Waiver under the Contracts (Rights of Third Parties) Ordinance, and a person who is not a party to the Waiver shall not have any right under the Contracts (Rights of Third Parties) Ordinance to enforce any provisions of the Waiver.

2. If the foregoing terms and conditions are acceptable to you, please signify your acceptance thereof by executing under seal the docket on both copies of the Waiver. Your execution must be duly witnessed. {I note that the Premises are [charged/mortgaged] to the [Chargee/Mortgagee]. It is essential that the written consent of the [Chargee/Mortgagee] be obtained, at your own expense, to the foregoing terms and conditions by having the consent endorsed in the manner indicated below, on both copies of the Waiver.}⁵ After execution {and the consent of the [Chargee/Mortgagee] has been duly endorsed,}⁵ please return both copies of the Waiver to me, whereupon the Waiver will be registered by Memorial at the Land Registry. After registration the original of the Waiver will be returned to you for retention with the documents of title in your possession and the duplicate will be retained for my records.

5 { }Delete if there is
no charge/mortgage

Yours faithfully,

(
Chief Estate Surveyor/)

[I/We] hereby agree to and accept the foregoing terms and conditions.

Witness :		
	(Signature and name in block letters)	(Signed, Sealed and Delivered by <i>[name of the owner]</i>)

Address :

OR

Seal of *[name of the owner]* and signatures and names in block letters of its attesting officers and description of their offices.)

6 { } Delete if there is no charge/mortgage

{[I/We], *[name of the Chargee/Mortgagee]* being the registered [Chargee/Mortgagee] of the Premises hereby consent to the issue of the Waiver on the above terms and conditions to *[name of the owner]* and formally acknowledge that [I/we] have no objection to the acceptance of such terms and conditions by *[name of the owner]*.

Signed by *[name of the signatory]*
for and on behalf of *[name of the Chargee/Mortgagee]*}⁶

[N.B. You are required to note that pursuant to the provisions of the Land Registration Ordinance and the Regulations made thereunder the personal data contained in this Waiver Letter will appear in the land register(s)/record(s) of the Land Registry to facilitate the orderly conduct of land transaction and to provide the most up-to-date information to searchers.]

SCHEDULE

[insert the covenants in the older form Government Leases to be waived, where identification by general description, clause or condition numbers is not feasible]