

Special Terms and Conditions of Infinite Backup Service

1. Definition

1.1 Unless otherwise provided, words and expressions used herein shall have the same meaning ascribed to them in the General Terms and Conditions.

2. The Service

2.1 HKBNES shall use reasonable efforts to make the Service available to the Subscriber in accordance with the Agreement. HKBNES may suspend the Service in whole or in part or limit access to the Service at any time without notice but HKBNES shall use reasonable efforts to minimize such suspension or limitation. Subscriber shall be liable for all Charges during the period of suspension or limitation unless otherwise specified by HKBNES.

2.2 HKBNES reserves the right at all times to discontinue or change the Service in whole or in part or change or remove features or functionality of the Service, amend the Charges or introduce new charges payable by Subscriber, amend any of the terms and conditions of the Agreement, alter, modify and/or delete any of the Service or the Contents from time to time without prior notice to Subscriber.

2.3 Subscriber shall not resell the Service to any person.

3. Use of Service

3.1 The Service is provided to Subscriber on an “as is” basis, and without any warranty of any kind, whether express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose.

3.2 Subscriber is solely responsible for the use of the Service.

3.3 HKBNES shall use reasonable endeavor to ensure the security of the server(s) (“Server”) used in connection with the Service. HKBNES does not guarantee that the Server shall be averted from any unauthorized users or hackers.

3.4 HKBNES shall not be responsible for any materials or information, including but not limited to files, data, or software applications, stored in the Server. Subscriber agrees to take full responsibility for the materials or information transferred, received or stored and to maintain all appropriate backup of materials or information stored in the Server.

3.5 Subscriber shall not attempt to probe, scan, penetrate or test the vulnerability of a HKBNES Cloud platform, whether by passive or intrusive techniques without HKBNES’s prior written consent.

4. Termination

4.1 HKBNES may terminate provision of the Service without prior notice and/or giving any reason therefor.

5. PIN and Password

5.1 HKBNES may assign a PIN and/or Password to Subscriber to access the Service.

6. Compliance and Security

6.1 Subscriber shall comply with all laws and regulations applicable to the use of the Service. Subscriber will ensure that all Subscriber data stored or transmitted via the Service complies with all applicable laws and reasonable information security practices, including without limitation those relating to the encryption of data.

7. Licence and Restrictions

7.1 All software are owned by HKBNES and/or its third party software partners. During the term of any applicable contract, HKBNES grants or will procure to grant to Subscriber a non-transferable, non-exclusive licence to use the software in object code form only, solely on equipment used in conjunction with the Service.

7.2 Subscriber agrees that it will not, nor through any of its parent, subsidiary, affiliate, agent or third party:

- (i) copy the software except as expressly allowed under this Agreement;
- (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from the software;
- (iii) sell, lease, licence, sub-licence, modify, time share, outsource or otherwise use or transfer the software or the documentation to any third party;
- (iv) write or develop any derivative software or any other software program based upon the software or any confidential information;
- (v) use the software to provide processing services to third parties;
- (iv) alter or attempt to change the settings on the software products or rights of use intellectual property on the software.

7.3 No transfer of the title or any proprietary or intellectual property rights to the software, documentation, or any copyrights, patents, trademarks or any other intellectual property embodied or used in connection therewith is made to Subscriber, except for the rights expressly granted in this Section 7. Subscriber shall:

- (i) not claim or assert title or ownership to the software (or modifications thereto), or remove or alter any copyright or proprietary notice from copies of the software;
- (ii) use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the software; or
- (iii) not export or re-export the software without the written consent of HKBNES or its software licensor.

8. Excessive Use of the Service

Should the Subscriber’s use of the Service result in consuming excessive system resources, at HKBNES’s sole and absolute discretion, HKBNES may suspend the Subscriber’s use of the Service, or charge the excessive usage until the cause of such excessive use of system resources is determined, ceased and resolved.

9. Deposit and Prepayment

9.1 HKBNES shall have the right to require Subscriber to prepay service fee or any charge upon registration of the Service and/or at any time to require Subscriber to pay a deposit as security for the due performance and discharge by Subscriber of its obligations and liabilities relating to the use of the Service or the relevant Equipment or otherwise under this Agreement (the amount of which shall be determined by HKBNES at its sole discretion). HKBNES reserves the right to increase the amount of the deposit from time to time. The deposit shall be retained by HKBNES free of any interest to the Subscriber and shall not be transferred to Subscriber's other account for the Service.

9.2 Any unused access/usage time or Service committed as specified in the relevant Service Plan selected by the Subscriber will not be carried forward to the following month and HKBNES will not give any credit or refund in respect of any failure, suspension or interruption of all or part of the Service for any reasons whatsoever.

10. Subscriber's Warranties

10.1 Subscriber will abide by all the terms and conditions governing the use of the Service and any amendments and supplement thereto stipulated by HKBNES and any terms and conditions set out by third party service providers who provide any services accessible by or through using the Service;

10.2 Subscriber will submit true and complete information to HKBNES and must notify HKBNES promptly in writing of any changes to his details as provided to HKBNES and whatsoever information requested by HKBNES;

10.3 Subscriber will not use or allow others to use the Service to circulate, publish, transmit, distribute, or any unsolicited promotional or advertising information or any content that is seditious, obscene, defamatory, indecent, threatening, offensive, liable to incite racial hatred, discriminatory, menacing, objectionable or for mail-spamming, junk mail and/or bulk transmission of messages to Internet users, providers or newsgroup;

10.4 Subscriber will not act, nor allow others to, act in such a way that may jeopardize or impair the provision of the Service in Hong Kong or elsewhere;

10.5 Subscriber will ensure that either it owns the computer or he/she has obtained the consent of the owner of the computer for HKBNES to conduct any reconfiguration and/or installation activities for the provision of the Service.

11. Limitation of Liability

11.1 Nothing in the Agreement shall be construed as limiting the liability of either party for personal injury or death resulting from the negligence of a party or its employees.

11.2 Neither party, nor its affiliates, contractors, suppliers or agents, shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including but not limited to damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of customers, loss of data or interference with business), whether or not caused by the acts or omissions or negligence of the party, its employees or agents, and regardless of whether such party has been informed of the possibility of the likelihood of such liability or damages.

11.3 Provisions of the Agreement that exclude or limit HKBNES's liability apply to the extent permitted by law. The parties agree that HKBNES's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising out of or in connection with the provision of the Service, whether in respect of any one incident or series of incidents, whether or not arising from a common cause, shall not exceed the amount paid by Subscriber to HKBNES for the Service.

12. Miscellaneous

12.1 Subscriber acknowledges and agrees that the obligations of HKBNES under this Agreement may be performed by other companies in line with HKBNES. HKBNES shall further have the rights to sub-contract any of its obligation to a third party. HKBNES shall be entitled to assign or transfer its rights hereunder to any third party.

12.2 Subscriber acknowledges and agrees that HKBNES will send promotional material and/or information about related services provided by HKBNES or any third party to Subscriber by post or email from time to time. Subscriber shall notify HKBNES in writing if he/she does not want to receive any such material or information and HKBNES will not charge any fee for this request.

12.3 Any notice required to be given by HKBNES to Subscriber may be given by HKBNES by post, facsimile, email or any other means at the sole discretion of HKBNES. Any such notice shall be deemed to have been received and given at the time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

12.4 HKBNES reserves the right to the final decision on any dispute regarding the terms and conditions governing the use of the Service.

12.5 HKBNES will not be liable for any delay or failure in the performance under the Agreement due to an event beyond the reasonable control of HKBNES, including but not limited to, act of God, act of third party vendor or supplier, labour disputes, or mechanical or electrical breakdown ("Force Majeure Event").

12.6 The Agreement shall be governed by and construed in accordance with the laws of Hong Kong and any disputes shall be submitted to the exclusive jurisdiction of Hong Kong courts.