

TERMS OF SERVICE

The following Terms of Service govern all products and services provided by BMIT Limited, its affiliates, successors and assigns ("Company") to its customers ("Customer") and contains the terms and conditions that govern your access to and use of the Services (as defined below). This Terms of Service agreement ought to be read in conjunction with our Privacy Policy. If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

In accordance with applicable Data Protection legislation BMIT Limited of SCM02, Floor 2, Smart City Malta, Kalkara, Malta, is the Processor of any Personal Data that you or your company may receive, stores, or transmit on or using the Service.

You are therefore strongly advised, as a Controller of such Personal Data to download and sign the BMIT DPA available at <https://www.bmit.com.mt/privacy/>

Throughout this Agreement, the following terms shall be defined as follows:

"Agreement" means each contract created between Company and Customer for the provision of Services consisting of an Order, the applicable Service Description, these Terms of Service and any applicable Annexes.

"Acceptable Use Policy" means the policy currently available in Annex 1 as may be amended from time to time.

"Customer Content" includes all applications, data in whatever format including back up data, software, graphics, text, names, marks, logos, hypertext links to other websites and other information incorporated in, transmitted through or published or displayed on the Customer website or accessible through or present on or any other equipment, hardware, means or facilities used by Customer.

"Customer website" means Customer's site on the World Wide Web portion of the Internet that Company hosts under this Agreement.

"End User" means any Person who accesses or uses the Customer website or services via the Internet.

"Company Technology" means Company's proprietary technology, including, without limitation, Company services, software tools, hardware designs, algorithms, software (in source code and object code forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Company or

licensed to Company from a third party), and also including any derivatives, improvements, enhancements, updates, modifications or extensions of Company Technology conceived, reduced to practice or developed during the term of this Agreement by either party.

"Person" means any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association or organization, or government or any agency or political subdivision thereof.

"Proprietary Information" means all technical, business and other information of a party (i) that is not generally known to the public, (ii) that derives value, economic or otherwise, from not being generally known to the public or to other Persons who can obtain value from its disclosure or use, and (iii) which information is subject to efforts that are reasonable under the circumstances to maintain the secrecy thereof.

"Public Cloud Service" shall include virtual computing instances such as Virtual Private Servers, Virtual Firewall Instances, Virtual Load Balancer instances, Online Backup and Storage Services, or other online computing infrastructural services or applications, and any associated Licence or Right to use any hardware or software, that is deployed on the Service Providers infrastructure, together with the specified connectivity for providing the Service as more particularly described in the applicable Service Description.

"Order" means the Order submitted by the Customer to Company for Services, whether such Order is submitted online through Company's website, telephone or written order form as Customer will be directed by the Company to do.

"Terms of Service" means these Terms of Service, as the same may be modified, altered or amended from time to time by Company.

"Service" which shall for the purpose of this Agreement be construed to include hosting in general, Virtual Private Servers, Cloud Computing, back up services, hosted services, and any Licence or Right to use any hardware or software, the specified connectivity, storage space and bandwidth for providing the Service as more particularly described in the applicable Service Description. "Optional Service" means any additional Service Company may provide in response to an Order, as more particularly described in the applicable Service Description.

"Service Description" means the applicable required service as chosen by Customer and if available any supporting documents made available by Company, including via publication on its website to describe the applicable Services at the time the Order is accepted by Company.

"Term" means the duration of any Agreement between Company and Customer which shall be that defined in the ordering process or if not, of one calendar year or as may be agreed in writing between the Parties.

1. Order, Acceptance and Service

- (a) Unless otherwise stated by an agreement signed in writing by Customer and Company, these Terms of Service shall apply to all Services provided by Company to Customer in line with the Customers' specific requests and requirements. Customer may access and use the Service in accordance with this Agreement and the Service Level Agreements may apply to certain Services. Customer will adhere to all laws, rules, and regulations applicable to your use of the Service, including the Terms of Service and the Acceptable Use Policy.
- (b) Customer is responsible for all activities that occur under his account on the Service, regardless of whether the activities are undertaken by him, employees or a third party (including contractors or agents) and, except to the extent caused by our breach of this Agreement, Company and its affiliates are not responsible for any action undertaken by Customer or on behalf of Customer.
- (c) Company will provide, and Customer will purchase and pay for, the Services as may be specified in the Order for the service fees specified in the Order, any Invoices and/or the applicable Service Description (the "Service Fees"). Company may also provide Third Party Content, such as software applications provided by third parties, under separate terms and conditions, including separate fees and charges. Because we may not have tested or screened the Third Party Content, your use of any Third Party Content is at your sole risk.
- (d) In connection with any Services, Customer will not use any product or service in excess of the applicable limits established for the Services in the Service Descriptions. If Customer uses additional resources in excess of such applicable limits, Company may, without limiting its other rights or remedies, assess Customer with additional fees or suspend or terminate the Services. Specifically, for the Cloud Infrastructure service, Customer may use additional resources only within the limits defined by the Company, and agrees to pay any additional usage as invoiced by Customer in relation to such over usage.

2. Fees, Taxes and Payment

Customer will pay to Company the Service Fees in the manner set forth in the Order. Company may increase the Service Fees;

- i. in the manner permitted in the Service Description and;
- ii. at any time on or after expiration of the Initial Term by providing ten (10) days prior written notice thereof to Customer.

The Service Fees do not include any applicable sales, use, revenue, excise or other taxes imposed by any taxing authority with respect to the Services or any software provided hereunder (excluding any tax on Company's net income). All such taxes will be added to Company's invoices

for the Service Fees as separate charges to be paid by Customer. All fees are fully earned when due and non-refundable when paid. Unless otherwise specified, invoices for the Service Fees and related charges shall be immediately due and payable within 5 days after the date of the invoice. If any invoice is not paid within 15 days after the date of the invoice, Company may charge Customer a late fee of €25 for such invoice; in addition, any amounts payable to Company not paid when due will bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less. Delinquent accounts may be suspended at Company's sole discretion. In the event of a suspension of the Services, upon a reactivation request by Customer, Customer shall pay Company a reactivation fee in addition to full payment of the outstanding balance due.

Reactivation of services will only be performed during Company's normal business hours (Monday through Friday, 8:00 am 5:00 p.m., Central European Time, excluding holidays). If Company collects any payment due at law or through an attorney at law or under advice therefrom or through a collection agency, or if Company prevails in any action to which the Customer and Company are parties, Customer will pay all costs of collection, arbitration and litigation, including, without limitation, all court costs and Company's reasonable attorneys' fees. If any Customer payment is returned for insufficient funds Company will impose a processing charge of €50. If two or more Customer payments are returned for insufficient funds in any 6-month period, Company in its sole discretion may require alternative payment methods for all future Customer payments including, without limitation, credit card, money order, or cashier's check.

All fees and charges payable are exclusive of applicable taxes and duties, including VAT and applicable sales tax. Customer will provide us any information we reasonably request to determine whether we are obligated to collect VAT from him, including your VAT identification number.

3. Term and Termination

- (a) The Services will commence on the Effective Date indicated in the Order irrespective of whether Customer has started using them or not and will continue for the duration of the Initial Term. Thereafter, the Order will automatically renew for successive one-month periods unless the Order is earlier terminated in accordance with its terms or either party gives written notice to the other party of non-renewal at least 30 days prior to expiration of the then-current term.
- (b) Either party may terminate this Agreement immediately upon the occurrence of any one or more of the following events:
 - i. the other party fails to pay when due any amounts required to be paid under this Agreement;
 - ii. the other party breaches any material term or provision of this Agreement (other than a breach described in subsection (i) above), and if capable of cure, such breach remains uncured 30 days after the non-breaching party gives written notice thereof to the breaching party;

- iii. the other party becomes insolvent, makes an assignment for the benefit of its creditors, institutes or becomes subject to any proceeding under any bankruptcy or similar laws for the relief of debtors, or seeks the appointment of, or becomes subject to the appoint of, any trustee or receiver for all or any portion of such party's assets;
 - iv. in case of a force majeure event. Unless otherwise specified at Law or pursuant to a lawful order by any competent Authority, upon termination of the Agreement for whatever reason or deactivation all Customer Content will be removed, erased and destroyed after ninety (90) days from the said termination or deactivation.
- (c) Company may suspend, deactivate or terminate this Agreement and in either case delete or remove the Customer Content without any liability, at any time and without applying the 90 days as referred to in (b) above;
- i. if the Services or anything related to such services is prohibited by the applicable law, or become impractical or unfeasible for any technical, legal or regulatory reason or there is a risk that they might damage the reputation of the Company;
 - ii. if any third party or Authority claims that the Services provided to the Customer/and/or any activity directly or indirectly performed for, by or on behalf of Customer are breaching their rights or are illegal and following notice of such to Customer, Customer fails to provide adequate assurances to the contrary;
 - iii. if the Service has been deactivated, suspended or terminated for a period of more than sixty (60) days in any applicable Term;
 - iv. if ordered to do so by a competent Authority, if the Service and/or Content poses a security risk to the Service of other Customer or any third party, if there is a breach of this Agreement, including non-fulfillment of payment obligations for more than 15 days, if Customer ceases to operate and/or in the ordinary course, makes an assignment for the benefit of creditors or similar disposition of the assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

In all cases where it is reasonably and operationally possible Company will inform Customer with as much prior notice as reasonably practicable.

If the Service is suspended in part, the right to access or use any portion or all of the Service, the Customer:

- (a) remains responsible for all fees and charges that have been incurred through the date of suspension;
- (b) remains responsible for any applicable fees and charges for any Service to which he will continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;

- (c) will not be entitled to any service credits under the Service Level Agreements for any period of suspension;
- (d) will not have the Content erased as long as there is not a specific order by a competent Authority or as specified elsewhere in this Agreement;
- (e) Upon termination of this Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under this Agreement, except as expressly set forth herein. Customer shall also immediately destroy all copies of any software provided by Company as part of any Service and shall not make any further use of such Service and software. Any retention or use of such software and Service will be illegal. The provisions of Sections 3(d), 4, 5.1, 8, 10, 11, 12 and 14 of this Agreement shall survive the expiration or termination of this Agreement for any cause or reason whatsoever, and, notwithstanding the expiration or termination of this Agreement, the parties shall each remain liable to the other for any indebtedness or other liability theretofore arising under this Agreement. Termination of this Agreement and retention of pre-paid fees and charges shall be in addition to, and not be in lieu of, any other legal or equitable rights or remedies to which Company may be entitled;
- (f) Within 30 days after the termination of this Agreement, Customer will pay the Company an amount equal to one hundred percent (100%) of the fees that would become due over the balance of the then-current Term ("Termination Charge") to Company unless (i) Company terminated the Order under Section 3(c) or (ii) Customer terminated the Order under Section 3(b). The parties agree that the Termination Charge constitutes consideration for Company's time, effort and expense in preparing and reserving the capacity to perform its obligations hereunder, as actual damages are difficult to ascertain. If Customer terminates the Order in accordance with Section 3(b) Company shall return to Customer, and Customer shall accept, as Customer's sole and exclusive remedy for Company's breach of the Order, any Service Fees paid in advance by Customer hereunder attributable to Services not yet rendered as of the date of termination.

4. Customer's Representations and Warranties

Customer hereby represents and warrants to Company, and agrees that during the Term Customer will ensure that:

- (a) Customer is the owner or valid licensee of the Customer Content and each element thereof, and Customer has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Customer Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Company to pay any fees, residuals, guild payments or other compensation of any kind to any Person;

- (b) Customer's use, publication and display of the Customer Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any Person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any Person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated;
- (c) Customer will comply with all applicable laws, rules and regulations regarding the Customer Content and the Customer website and will use the Customer website only for lawful purposes;
- (d) Customer has used its best efforts to ensure that the Customer Content is and will at all times remain free of all computer viruses, worms, trojan horses and other malicious code;
- (e) Customer will use the Services only for business purposes and not for any family, household or personal use; and
- (f) Customer will always be responsible for any Customer Content uploaded and to this end will also double check and be certain at all times that adequate internet connection is available and in case of any Service used including use of software to upload and/or to perform back on Customer Content, he routinely checks the accuracy, completeness, accessibility and retrievability of such uploaded Customer Content including any back up performed.

5. License to Company and Proprietary Rights

Customer hereby grants to Company a non-exclusive, royalty-free, worldwide right and license during the Term to do the following to the extent necessary in the performance of Services under the Order: in particular to

- (a) virtualise, digitize, convert, install, upload, share, install. select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, push, pull, publicly display, publicly perform and hyperlink the Customer Content either directly or through the Customer; and
- (b) make archival or back-up copies of the Customer Content and the Customer website as well as to destroy and delete the Customer Content during the Term and after expiration or termination of the Term as provided in this Agreement. Except for the rights expressly granted above, Company is not acquiring any right, title or interest in or to the Customer Content, all of which shall remain solely with Customer.

Except as provided in this Section 5, Company has no rights under this Agreement from the Customer Content, including any related intellectual property rights and Customer consents to

the use of the Content to provide the Service. Company may disclose the Content to provide the Service or to comply with any request of a governmental or regulatory body.

Customer represents and warrants to the Company that:

- (a) they or their licensors own all right, title, and interest in and to the Content;
- (b) have all rights in the Content necessary to grant the rights contemplated by this Agreement; and
- (c) none of the Content, or the Services will violate the Acceptable Use Policy.

Customer is granted by the Company a limited, revocable, non-exclusive, non-sub licensable, non-transferrable license to do the following during the Term:

- (a) access and use the Services solely in accordance with this Agreement; and
- (b) copy and use the Content solely in connection with the permitted use of the Services. Customer will not directly or indirectly by any act or omission allow anyone or attempt to;
 - i. modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Service (except to the extent software included in the Service O are provided to you under a separate license that expressly permits the creation of derivative works);
 - ii. reverse engineer, disassemble, or decompile the Service or apply any other process or procedure to derive the source code of any software included in the Service; or
 - iii. access or use the Service in a way intended to avoid incurring fees or exceeding usage limits or quotas. All licenses granted under this Agreement are conditional on your continued compliance this Agreement, and will immediately and automatically terminate if there is a failure to comply with any term or condition of this Agreement. During and after the Term, Customer will not assert, nor will you authorize, assist, or encourage any third party to assert, against Company or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service used.

If Customer provides any suggestions to Company or affiliates, Company will own all right, title, and interest in and to the suggestions, even if you have designated the suggestions as confidential and will be entitled to use the suggestions without restriction. Customer hereby irrevocably assign to the Company all right, title, and interest in and to the suggestions and agrees to provide Company any assistance it may require to document, perfect, and maintain its rights in the suggestions.

Provision of Microsoft Software. In the event that the Cloud Computing Service being provided by the Service Provider to the Customer includes the right to use Microsoft Client Software and/or Microsoft Server Software on leased subscription basis then the use of such software by the customer is governed by the Terms and Conditions Regarding the Use of Microsoft Software as defined in Annex A4a.

6. Company's Acceptable Use Policy

Customer will abide by, and utilize the Services and the Customer website only in accordance with, the Acceptable Use Policy (the "Acceptable Use Policy") as such Acceptable Use Policy may be changed by Company from time to time. The Acceptable Use Policy is hereby incorporated herein and marked as Annex 1. Customer shall impose the Acceptable Use Policy on its customers and End Users to the extent necessary to ensure their compliance. Customer shall familiarize itself with the Acceptable Use Policy and periodically access Company's website to determine if Company has made any changes thereto.

7. Customer's Responsibilities

- (a) Customer is solely responsible for the quality, performance and all other aspects of the Customer Content and the goods or services provided through the Customer website.
- (b) Customer will cooperate fully with Company in connection with Company's performance of the Services. Customer must provide any equipment or software that may be necessary for Customer to use the Services. Delays in Customer's performance of its obligations under this Agreement will extend the time for Company's performance of its obligations that depend on Customer's performance on a day for day basis. Customer will notify Company of any change in Customer's mailing address, telephone, e-mail or other contact information.
- (c) Customer assumes full responsibility for providing End Users with any required disclosure or explanation of the various features of the Customer website and any goods or services described therein, as well as any rules, terms or conditions of use.
- (d) Customer can, depending on service, provide Company with a registered domain name for the Customer website, or, upon Customer's request and subject to the Company's terms and conditions in relation to domain name registrations, the provisions of which are incorporated herein by this reference, Company will register an Internet domain name on behalf of Customer.
- (e) Customer is solely responsible for the development, content, operation, maintenance, and use of Service and in particular for:
 - i. the technical operations, including ensuring that calls you make to any Service are compatible with then-current APIs for that Service;
 - ii. compliance with the Acceptable Use Policy, any other applicable Policies which may be issued from time to Time by Company, and all the applicable laws and regulations ;
 - iii. any claims relating to the Service; and
 - iv. properly handling and processing notices sent to Customer (or any of the affiliates) by any person claiming that the Service violates such persons' rights.

Customer is also responsible for properly configuring and using the Service and taking steps to maintain appropriate security, protection and backup, which may include the use of encryption technology and routine archiving

Customer is responsible for any end users' use of the Service and has to ensure that all End Users comply with the obligations under this Agreement.

8. Company Intellectual Property

Company's Intellectual property rights including trademarks, tradenames, service marks, logos, domain names other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of Company. Customer may not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of Company. Company shall maintain and control ownership of all Internet protocol numbers and addresses that may be assigned by Company to Customer. Company may, in its sole discretion, change or remove any and all such Internet protocol numbers and addresses.

9. Limited Warranty

- (a) Company represents and warrants to Customer that the Services will be performed;
- i. in a manner consistent with industry standards reasonably applicable to the performance thereof;
 - ii. at least at the same level of service as provided by Company generally to its other customers for the same services; and
 - iii. in compliance in all material respects with the applicable Service Descriptions.

Customer will be deemed to have accepted such Services unless Customer notifies Company within 30 days after performance of any Services of any breach of the foregoing warranties. Company does not warrant that the use of the Service including any software will operate uninterrupted or error free and that the use of the Service including any use of software will identify or filter out all known spam, viruses or other programming routines. Company likewise does not warrant that the Service including the use of any software will operate with all combinations of hardware and software selected by Customer. Company will not be responsible for the accuracy and completeness of the results obtained from the use of the Service including use of any software and/or accuracy, completeness; accessibility and retrievability of all or any part any uploaded any Customer Data. Customer's sole and exclusive remedy, and Company's sole obligation, for breach of the foregoing warranties shall be for Company, at its option, to re-perform the defective Services at no cost to Customer, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue Customer a credit in an amount equal to the current monthly Service Fees pro-rated by the number of hours in which the Services have been interrupted. Company may provision the Services from any of its data centers and may from time to time re-provision the Services from different data centers.

(b) The foregoing warranties shall not apply to performance issues or defects in the Services;

- i. caused by factors outside of Company's reasonable control;
- ii. that resulted from any actions or inactions of Customer or any third parties; or
- iii. that resulted from Customer's equipment or any third-party equipment not within the sole control of Company.

(c) Except as expressly provided in this Section 9, Company makes no representations or warranties of any kind, express or implied, with respect to the services or any software provided under this agreement, including, without limitation, any warranty of merchantability, fitness for a particular purpose, title or non-infringement of third-party rights, and company hereby expressly disclaims the same. Without limiting the foregoing, any third-party software provided to customer hereunder is provided "as is" without any condition or warranty whatsoever. Company does not warrant that that the service offerings or third-party content will be uninterrupted, error free or free of harmful components, or that any content, including your content or the third party content, will be secure or not otherwise lost or damaged.

10. Limitation of Liability

The Company and our affiliates or licensors will not be liable to the customer for any direct, indirect, incidental, special, consequential or exemplary damages (including damages for loss of profits, goodwill, use, or data, and/or customer content), even if a party has been advised of the possibility of such damages. Further, neither company nor any of its affiliates or licensors will be responsible for any compensation, reimbursement, or damages arising in connection with;

(a) any inability to use the services, including as a result of any;

- i. termination or suspension of this agreement or the use of access to the service;
- ii. discontinuation of any or all of the service, or;
- iii. without limiting any obligations under the service level agreements, any unanticipated or unscheduled downtime of all or a portion of the services for any reason, including as a result of power outages, system failures or other interruptions;

(b) the cost of procurement of substitute goods or services;

(c) any investments, expenditures, or commitments by customer in connection with this agreement, or;

(d) any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of content or other data. In any case, the aggregate liability under this agreement will be limited to the amount customer actually pays us under this agreement for the service that gave rise to the claim during the 3 months preceding the claim.

11. Indemnification of Company

Customer shall defend, indemnify and hold harmless Company, its affiliates and their respective present, former and future officers, directors, employees and agents, and their respective heirs, legal representatives, successors and assigns (collectively the "Company Indemnitees"), from and against any and all losses, damages, costs, liabilities and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees) which any of the Company Indemnitees may suffer, incur or sustain resulting from or arising out of (i) Customer's breach of any representation, warranty, or covenant contained in the Agreement, (ii) the Customer Content, the Customer website or any End User's use of the Customer Content or the Customer website, (iii) violation by Customer or any of its officers, directors, employees or agents of the Acceptable Use Policy or any applicable law, (iv) claims or actions of third parties alleging misappropriation of trade secrets or infringement of patents, copyrights, trademarks or other intellectual property rights arising from the use, display or publication of Customer's domain names, the Customer website, the Customer Content, or the use of the Services in combination with hardware, software or content not provided by Company, (v) claims or actions by third parties relating to or arising out of Customer's use of the Services, and (vi) any failure of the Customer Content or any aspect of the Customer website to be compatible with the hardware or software used by Company to provide the Services, including any damage to Company's servers or other hardware caused thereby.

12. Confidentiality and Non-Solicitation

(a) Each party will not, without the prior written consent of the other party, use or disclose to any Person any Proprietary Information of the other party disclosed or made available to it, except for use of such Proprietary Information as required in connection with the performance of its obligations or use of the Services hereunder. Subject to Section 13(b), each party will;

- (a) treat the Proprietary Information of the other party as secret and confidential;
- (b) limit access to the Proprietary Information of the party to those of its employees who require it in order to effectuate the purposes of this Agreement, and
- (c) not disclose the Proprietary Information of the other party to any other Person without the prior written consent of the other party.

(b) Notwithstanding Section 12(a), the following shall not be considered Proprietary Information:

- i. any information that the receiving party can demonstrate by written documentation was within its legitimate possession prior to the time of disclosure by the disclosing party;
- ii. any information that was in the public domain prior to disclosure by the disclosing party as evidenced by documents that were published prior to such disclosure;
- iii. any information that, after disclosure by the disclosing party, comes into the public domain through no fault of the receiving party,
- iv. any information that is disclosed to the receiving party without restriction by a third party who has legitimate possession thereof and the legal right to make such disclosure; or
- v. any information that, two years after expiration or termination of this Agreement, does not constitute a trade secret under applicable law.

(c) Each party acknowledges that disclosure of any aspect of the Proprietary Information of the other party shall immediately give rise to continuing irreparable injury to the other party inadequately compensable in damages at law, and, without prejudice to any other remedy available to the other party, shall entitle the other party to injunctive or other equitable relief. Upon expiration or termination of this Agreement for any reason, each party shall promptly return to the other party all Proprietary Information of the other party (including all copies thereof) in its possession or control.

(d) During the term of this Agreement and for two years following expiration or termination of this Agreement, Customer will not, directly or indirectly, solicit or recruit the services of any employee of Company performing services under this Agreement, while such employee is employed by Company and for a period of six months after such employee has left the employment of Company.

13. Terms regulating the provision of Optional Services:

(a) Customer must provide Company with any information, login identifications, passwords or other information or access to facilities that Company may reasonably require to provide the Optional Services. Company will have no responsibility for any delays or increased costs or expenses associated with Customer's failure to provide any of such information. If Customer does not provide any such information or access requested by Company within fifteen (15) days of Company's request therefor, Company may terminate the Order and retain any Service Fees paid.

(b) If Customer requested that Company perform the Optional Services by a particular deadline or that Company achieve some particular result or outcome, Company will use commercially reasonable best efforts to perform the Services by any such deadline and achieve the result requested by Customer; provided, however, that;

- i. Company's ability to perform the Services is subject to Customer's provision of information and access as provided above, and;
- ii. Company has no liability or obligation to complete the Services by any deadline or achieve any particular outcome or result.

(c) If Customer wishes to convey documents or files to Company, Customer should deliver to Company a copy or duplicate of such documents or files and not the original copy. Company will not return to Customer any documents or files conveyed to Company.

(d) Company will have no liability or responsibility for any damage, loss of data, loss of use or other loss occurring in connection with Company's provision of Optional Services requested by Customer.

14. Miscellaneous

(a) Independent Contractor. Company and Customer are independent contractors and nothing contained in this Agreement places Company and Customer in the relationship of principal and agent, master and servant, partners or joint ventures'. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

(b) Any litigation or other dispute resolution arising out of or relating to this Agreement or your use of the Service will take place in Malta, and both Parties hereby consent to the personal jurisdiction of and exclusive jurisdiction of Maltese Law and to the venue and courts in Malta. This Agreement will be governed by and construed in accordance with the laws of Malta without reference to the conflict of Law Rules. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Company reserves the right and the Customer accepts that it may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement.

(c) Each Party warrants to observe the Data Protection Legislation and undertakes in respect of any personal data that it may process on behalf of the Controller that at all times;

- i. the processing carried out under or in connection with this Agreement shall solely be carried out in the context of the activities of this Agreement; and
- ii. it will act solely on the instructions of the controller of the data; and
- iii. it maintains and shall continue to maintain appropriate and sufficient technical and organisational security measures to protect such personal data or information against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and in addition shall comply with the particular security measures required by Controller; and
- iv. Where applicable the expressions used in this clause 13 shall have the meanings given to them under the Data Protection Act (Chapter 568 of the Laws of Malta) and all ancillary subsidiary legislation.

The Parties in their role as data processor in terms of the provisions of this Agreement, for all such personal data which it will become aware of or which it shall collect in executing its rights and obligations under this Agreement, it shall bind itself to adhere to all the legal provisions relevant for the processing of personal data.

(d) Headings. The headings herein are for convenience only and are not part of this Agreement.

(e) Entire Agreement; Amendments. This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this Agreement constitutes the sole and entire

agreement between the parties with respect to the matters covered hereby. In case of a conflict between this Agreement and any purchase order, service order, work order, confirmation, correspondence or other communication of Customer or Company, the terms and conditions of this Agreement shall control. No additional terms or conditions relating to the subject matter of this Agreement shall be effective unless approved in writing by any authorized representative of Customer and Company. This Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Service may be modified from time to time by Company in its sole discretion, which modifications will be effective upon posting to Company's web site. Should any additional or modified provisions of this Agreement be found to be unenforceable or unconscionable, it is the express intent of the parties that the Agreement on the date of the Order shall be binding on both Company and the Customer.

(f) Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

(g) Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below the parties' signatures. Either party may change its address or facsimile number for purposes of this Agreement by notice in writing to the other party as provided herein. Company may give written notice to Customer via e-mail to the Customer's e-mail address as maintained in Company's billing records.

(h) Waiver. No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

(i) Assignment; Successors. Customer may not assign or transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of Company. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. Company may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder,

without the consent of Customer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(j) Limitation of Actions. No action, regardless of form, arising by reason of or in connection with this Agreement may be brought by either party more than one year after the cause of action has arisen.

(k) Counterparts. If this Agreement is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is signed electronically, Company's records of such execution shall be presumed accurate unless proven otherwise.

(l) Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labour disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment, service or material required for such party to perform its obligations hereunder.

(m) This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

(n) Marketing. Customer agrees that during the term of this Agreement Company may publicly refer to Customer, orally and in writing, as a customer of Company. Any other public reference to Customer by Company requires the written consent of Customer.

(o) Telephone Monitoring. To ensure Company's customers receive quality service, Company randomly selects phone calls for monitoring. These calls, between Company's customers and employees, are evaluated by supervisors. This is to guarantee that prompt, consistent assistance and accurate information is delivered in a professional manner.

(p) Customer agrees to use Cloud products and services for business purposes only.

Annex 1

Customer agrees that he will NOT use the Service to:

- a. upload, download, post, email, transmit, store or otherwise make available any Content that is unlawful, harassing, threatening, harmful, tortious, defamatory, libelous, abusive, violent, obscene, vulgar, invasive of another's' privacy, hateful, racially or ethnically offensive, or otherwise objectionable;
- b. stalk, harass, threaten or harm another;
- c. pretend to be anyone, or any entity, he is not — and may not impersonate or misrepresent as another person (including celebrities), entity, other Customer etc.;
- d. engage in any copyright infringement or other intellectual property infringement, or disclose any trade secret or confidential information in violation of a confidentiality, employment or nondisclosure agreement;
- e. post, send, transmit or otherwise make available any unsolicited or unauthorized email messages, advertising, promotional materials, junk mail, spam, or chain letters, including, without limitation, bulk commercial advertising and informational announcements;
- f. forge any TCP-IP packet header or any part of the header information in an email or a posting, or otherwise putting information in a header designed to mislead recipients as to the origin of any Content transmitted through the Service ("spoofing");
- g. upload, post, email, transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs designed to harm, interfere or limit the normal operation of the Service (or any part thereof), or any other computer software or hardware;
- h. interfere with or disrupt the Service (including accessing the Service through any automated means, like scripts or web crawlers), or any servers or networks connected to the Service, or any policies, requirements or regulations of networks connected to the Service (including any unauthorized access to, use or monitoring of data or traffic thereon);
- i. plan or engage in any illegal activity;
- j. gather and store personal information on any other users of the Service to be used in connection with any of the foregoing prohibited activities; and/or
- k. disclose or make available any security keys or pins or other information which Company granted to Customer to make use of the Service.

Additionally, Customer is prohibited from undertaking any of the following actions:

- i. anything that may impair, disrupt, interfere, affect the Company's service or the Services of other Customers.
- ii. anything which may cause a host, the service or the Network to slow down or crash
- iii. making excessive use of, or placing unusual burdens on the network and the Service
- iv. circumventing any applicable authentication or security processes or service metering applications.

Annex 2 - TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “Licensed Products”) provided by BMIT Ltd (hereinafter referred to as “Company”). Company does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Company must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Company, and to your understanding of, compliance with, and consent to the following terms and conditions, which Company does not have authority to vary, alter, or amend.

1. DEFINITIONS

“Client Software” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“Device” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.

“Server Software” means software that provides services or functionality on a computer acting as a server.

“Software Documentation” means any end user document included with server software.

“Redistribution Software” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

2. **OWNERSHIP OF LICENSED PRODUCTS.** The Licensed Products are licensed to Company from an affiliate of the Microsoft Corporation (collectively “Microsoft”). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.
3. **LEASE OF SOFTWARE ASSETS.** The Service Provider may provide the Customer with the right to use Microsoft Client Software and/or Microsoft Server Software on leased subscription basis for a specific period.
4. **SUBSCRIPTION FEES.** The Customer shall pay to the Service Provider for the use of the provided Software Assets the license subscription fees as defined in the Service Order

Form. The Customer acknowledges that such fees are based on Microsoft's licensing and pricing policy and that these may change during the term of the agreement. The Service Provider will communicate any such changes, giving the Customer at least thirty (30) days' advanced notice.

5. SERVICE PROVIDER'S OBLIGATIONS TO MICROSOFT. The Service Provider is obliged to report to Microsoft details about the Customer and the Microsoft software that is being leased to the Customer. Furthermore, in the event that Microsoft believes in good faith that the Customer is not complying with the End User License Terms, then the Service Provider will cooperate in good faith with Microsoft to investigate and if necessary remedy the non-compliance. The Customer hereby acknowledges and accepts such obligations.
6. USE OF CLIENT SOFTWARE. You may use the Client Software installed on your Devices by Company only in accordance with the instructions, and only in connection with the services, provided to you by Company. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.
7. USE OF REDISTRIBUTION SOFTWARE. In connection with the services provided to you by Company, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO COMPANY, WHICH TERMS MUST BE PROVIDED TO YOU BY COMPANY. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Company.
8. COPIES. You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Company; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Company, upon notice from Company or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.
9. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

10. NO RENTAL. You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Company.
11. TERMINATION. Without prejudice to any other rights, Company may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Company or Company's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.
12. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY COMPANY AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.
13. PRODUCT SUPPORT. Any support for the Licensed Products is provided to you by Company and is not provided by Microsoft, its affiliates or subsidiaries.
14. NOT FAULT TOLERANT. THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
15. EXPORT RESTRICTIONS. The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
16. LIABILITY FOR BREACH. In addition to any liability you may have to Company, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
17. MICROSOFT SERVICES PROVIDER USE RIGHTS. You will find the MICROSOFT SERVICES PROVIDER USE RIGHTS ("SPUR") under <http://www.microsoft.com/serviceproviders/licensing/spla.aspx>.

Annex 3 - BMIT CLOUD BACKUP TERMS AND CONDITIONS

BMIT Cloud Backup is a service provided by BMIT under a distributor license from Acronis GmbH (“Acronis”).

Users of BMIT Cloud Backup, BMIT Cloud Backup Software and BMIT Cloud Backup Services must read, understand and agree to the Acronis End User License Agreement provided on the Acronis website at <http://www.acronis.com/en-eu/support/documentation/>.

Annex 4 - BMIT Privacy Policy

For BMIT's current policies and practices with regard to personal data collected by BMIT through its websites please visit the Privacy Policy available at <https://www.bmit.com.mt/privacy/>.

Annex 5 – Terms & Conditions Regarding the Use of Microsoft Online Services

This annex governs the use of Microsoft Online Services, which may include associated media, printed materials, and “online” or electronic documentation (individually and collectively, “Licensed Products”) provided by BMIT Ltd. BMIT Ltd. does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which BMIT Ltd. must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with BMIT Ltd., and to your understanding of, compliance with, and consent to the following terms and conditions, which BMIT Ltd. does not have authority to vary, alter, or amend.

1. Additional Definitions:

- (a) Any reference in this agreement to “day” will mean a calendar day.
- (b) “Acceptable Use Policy” is set forth in the Online Services Terms.
- (c) “Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.
- (d) “Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.
- (e) “Customer Data” is defined in the Online Services Terms. “Customer Solution” is defined in the Online Services Terms.
- (f) “End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.
- (g) “Non-Microsoft Product” is defined in the Online Services Terms.
- (h) “Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.
- (i) “Online Services Terms” means the terms that apply to your use of the Products available at <http://www.microsoft.com/licensing/onlineuserights>. The Online Services Terms include terms governing your use of Products that are in addition to the terms in this agreement.
- (j) “Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.
- (k) “Product” means any Online Service (including any Software).
- (l) “Reseller” means an entity authorized by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide assistance with your Subscription.
- (m) “SLA” means the commitments we make regarding delivery and/or performance of an Online Service, as published at <http://www.microsoftvolumelicensing.com/csla>, or at an alternate site that Microsoft may identify.
- (n) “Software” means software we provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.
- (o) “Subscription” means an enrollment for Online Services for a defined Term as established by your Reseller.

(p) “Term” means the duration of a Subscription (e.g. 30 days or 12 months).

2. Right to use. Microsoft grants you the right to access and use the Online Services and to install and use the Software included with your Subscription, as further described in this agreement. We reserve all other rights.

3. Reseller Administrator Access and Customer Data. You acknowledge and agree that in subscribing to the service through BMIT Limited you have chosen BMIT Limited as your Reseller, Moreover you acknowledge that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, you may request additional administrator privileges from your Reseller; (ii) Reseller’s privacy practices with respect to Customer Data or any services provided by Reseller may differ from Microsoft’s privacy practices; and (iii) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. You consent to Microsoft providing Reseller with Customer Data and information that you provide to Microsoft for purposes of ordering, provisioning and administering the Online Services.

4. Acceptable use. You may use the Product only in accordance with this agreement and the BMIT Acceptable use policy. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in the Online Services Terms.

5. End Users. You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.

6. Customer Data. You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating Microsoft or BMIT Limited to you or to any third party. Microsoft and BMIT Limited do not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.

7. Responsibility for Accounts. You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Online Services. You must promptly notify customer support about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.

8. Eligibility for Academic, Government and Non-profit Versions. You agree that if you are purchasing an academic, government or non-profit offer, you meet the respective eligibility requirements listed at the following sites:

i. For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;

- i. For government offers, the requirements listed at <http://go.microsoft.com/government>; and;
- ii. For nonprofit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.

Microsoft and BMIT Limited reserve the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

9. Preview Releases. Microsoft may make Previews available. Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLA and all limited warranties provided in this agreement. Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into “General Availability.”

10. Subscriptions and Ordering. The Subscription offers available to you will be established by BMIT Limited and generally can be categorized as one or a combination of the following:

- i. Commitment Offering. You commit in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis in advance of use.
- ii. Consumption Offering (also called Pay-As-You-Go). You pay based on actual usage with no upfront commitment.
- iii. Limited Offering. You receive a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

Orders must be placed through BMIT Limited or the BMIT Online Cloud Services store at <http://www.bmit.com.mt/store>. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. You also may assign the rights granted under Section A4b-2 to a third party for use by that third party in your internal business. If you grant any rights to Affiliates or third parties with respect to Software or your Subscription, such Affiliates or third parties will be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

BMIT Limited may permit you to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

11. Pricing and Payment. Prices for each Product and any terms and conditions for invoicing and payment will be established by and agreed with BMIT Limited.

12. Renewal. Your Subscription will automatically renew unless you provide BMIT Limited with notice of your intent not to renew at least sixty (60) days prior to the expiration of the Term. Upon renewal of your Subscription, you may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.

13. Taxes. The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.

14. Agreement term and termination. This agreement will remain in effect until the expiration or termination of your Subscription, whichever is earliest. You may terminate this agreement at any time by contacting BMIT Limited. The expiration or termination of this agreement will only terminate your right to place new orders for additional Products under this agreement.

15. Cancellation or transfer of Subscription. BMIT Limited will establish the terms and conditions, if any, upon which you may cancel or transfer a Subscription.

16. Suspension. Microsoft or BMIT Limited may suspend your use of the Online Services if:

- (a) it is reasonably needed to prevent unauthorized access to Customer Data;
- (b) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; or
- (c) you do not abide by the Acceptable Use Policy or you violate other terms of this agreement.

If one or more of these conditions occurs, then:

- (a) For Limited Offerings, your use of the Online Services may be suspended or your Subscription and your account immediately terminated without notice;
- (b) For all other Subscriptions, a suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice to the named administrators for your Subscription before we suspend, except where we reasonably believe we need to suspend immediately. If you do not fully address the reasons for the suspension within sixty (60) days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your Subscription if your use of the Online Services is suspended more than twice in any 12-month period.

17. Security, Privacy, and Data protection. In using the Microsoft Online Services:

- i. you consent to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. You may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. You will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

Additional privacy and security details are in the Privacy Policy. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by your Reseller.

- ii. you consent and authorize Microsoft (and its service providers and subcontractors), at BMIT's direction or as required by law, to access and disclose to law enforcement or other government authorities data from, about or related to you, including the content of communications (or to provide law enforcement or other government entities access to such data).
- iii. you shall notify the individual users of the Online Services that their data may be processed, as and to the extent required by law, for the purpose of disclosing it to law enforcement or other governmental authorities as directed by BMIT Limited or as required by law, and you shall obtain the users' consent to the same.
- iv. You appoint BMIT Limited as your agent for the purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 17 of this Annex.

18. Warranties. Microsoft warrants that the Online Services will meet the terms of the SLA during the Term. Your only remedies for breach of this warranty are those in the SLA. Microsoft also warrants for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty Microsoft will, at its option and as your exclusive remedy, either (1) return the price paid for the Software or (2) repair or replace the Software.

This limited warranty is subject to the following limitations:

- i. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- ii. this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
- iii. this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and
- iv. this limited warranty does not apply to Previews or Limited Offerings.

Disclaimer. Other than this warranty, Microsoft provides no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

19. Defense of Claims. Microsoft will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret. You will defend Microsoft and / or BMIT Limited against any claims made by an unaffiliated third party that;

- (a) any Customer Data, Customer Solution, or Non-Microsoft Products, or services you provide, directly or indirectly, in using a Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or
- (b) arises from violation of the Acceptable Use Policy.

Microsoft's obligations won't apply to a claim or award based on:

- (i) any Customer Solution, Customer Data, Non-Microsoft Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product;
- (ii) your combination of the Product with, or damages based upon the value of, Customer Data, or a Non-Microsoft Product, data, or business process;
- (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim;
- (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; or
- (v) Products provided free of charge.

20. Remedies. If Microsoft reasonably believes that a claim under Section A4b-19 may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

21. Obligations. Each party must notify the other promptly of a claim under section 19 of this Annex. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 6 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

22. Limitation of Liability. The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription. For Products provided free of charge, Microsoft's liability is limited to direct damages up to \$5,000.00 USD.

23. Exclusion. Neither of the parties will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.

24. Exceptions to Limitations. The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 19 of this Annex; or (2) violation of the other's intellectual property rights.

25. Additional Software for use with the Online Services. To enable optimal access and use of certain Online Services, you may install and use certain Software in connection with your use of the Online Service. The number of copies of the Software you will be permitted to use or the number of devices on which you will be permitted to use the Software will be as described in the Online Services Terms in the product specific license terms for the Online Service. Microsoft or BMIT Limited may check the version of the Software you are using and recommend or download updates, with or without notice, to your devices. Failure to install updates may affect your ability to use certain functions of the Online Service. You must uninstall the Software when your right to use it ends. Microsoft or BMIT Limited may also disable it at that time. Your rights to access Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

License rights are not related to fulfillment of Software media. Your acquisition of Software media or access to a network source does not affect your license to Software obtained under this agreement. Microsoft licenses its Software to you, it does not sell it.

26. License Confirmation. Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment. License transfers are not permitted.

27. Support. First Level Support services for Products purchased under this agreement will be provided by BMIT Limited.

28. Miscellaneous.

- i. Notices. You agree to receive electronic notices from Microsoft or BMIT Limited, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.
- ii. Assignment. You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- iii. Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

- iv. Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.
- v. No agency. This agreement does not create an agency, partnership, or joint venture.
- vi. No third-party beneficiaries. There are no third-party beneficiaries to this agreement.
- vii. Entire agreement. This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Microsoft Online Subscription Agreement, (2) the Online Services Terms, and (3) any other documents in this agreement.
- viii. Survival. The terms in Sections 1, 2.e, 5, 6, 7, 10 and 11 will survive termination or expiration of this agreement.
- ix. U.S. export jurisdiction. The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the 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. For additional information, see <http://www.microsoft.com/exporting/>.
- x. Force majeure. Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
- xi. Contracting authority. If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.
- xii. Waiver of Right to Void Online Purchases. To the maximum extent permitted by applicable law, you waive your rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.