

## **BMIT Addendum on Data Processing**

This Data Processing Addendum (the "Addendum") is between the BMSS Group entity which has entered into an agreement with the customer signing below to provide IT hosting and/or related services including support services and the detection, prevention and resolution of technical issues (respectively "BMIT", the "Agreement", the "Customer", and the "Services").

This Addendum is to address the Customer's compliance obligations under applicable Data Protection Law, and is applicable only if and to the extent that applicable Data Protection Law applies to the Processing of any Personal Data by BMIT for Customer in relation to the Services ("Customer Personal Data"). If the entity signing this Addendum is not the Customer under the Agreement, this Addendum is not valid and is not legally binding. End-users are not a party to this Addendum.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added, where applicable, either as an Addendum to the Master Services Agreement or to the Cloud Terms and Conditions. Except as modified below, the terms of the Master Services Agreement or Cloud Terms and Conditions, shall remain in full force and effect.

**HOW TO EXECUTE THIS ADDENDUM.** The main body of this Addendum has been pre-signed on behalf of BMIT. Customer must complete, sign and return a copy of the Addendum to [gdpr@bmit.com.mt](mailto:gdpr@bmit.com.mt). This Addendum shall only be effective on the date that BMIT provides Customer with an acknowledgement of receipt of the fully signed Addendum; and, upon the effective date, the Agreement shall be amended to incorporate this supplementary Addendum.

### **1. Definitions**

1.1. In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

‘data protection legislation’ shall refer to the legislation on the protection of personal data applicable in Malta and, in particular, to the Data Protection Act (Cap. 568 of the Laws of Malta); and the EU General Data Protection Regulation (Reg. 2016/679) which may in particular also be referred to as the ‘GDPR’.

‘customer personal data’ and ‘personal data’ shall have the same meaning as ‘personal data’ ascribed in applicable data protection legislation and shall extend and apply to any personal data held by legal and/or natural persons.

‘data subject’, ‘processing’ and ‘data breach’ shall have the same meaning as ascribed in applicable data protection legislation.

‘Customer Configuration’ means an information technology system which is the subject of

the Services or to which the Services relate.

'End-users' means Customer's own clients and Affiliates whose Personal Data is Processed by BMIT through the provision to, or use by, the Customer of the Services.

'Master Services Agreement' shall refer to the agreement between the Parties with respect to the Services

'Cloud Terms and Conditions' shall refer to BMIT Limited Cloud offering Terms and Conditions available at URL <https://store.bmitcloud.com/http/terms.php>

- 1.2 With respect to any personal data that the Customer may have access to by virtue of the applicable contract, the Parties agree that BMIT is the Data Processor and that the Customer is the Data Controller.

## **2. Data Processing and Protection**

- 2.1. Customer may be either of the following (a) a Controller of Customer Personal Data, or (b) a Processor when it Processes Customer Personal Data on behalf of its End-users. Consequently, BMIT is a Processor where Customer is Controller or Processor, or a sub-processor when Customer is acting as a Processor on behalf of its End-users;
- 2.2. In the circumstances were either as a result of a legal obligation, lawful request or legitimate criteria BMIT are obliged to take a decision on the processing of the personal data, Controller obligations will apply in line with applicable legislation;
- 2.3. The subject matter of the Processing is BMIT's provision and Customer's use of the Services and the detection, prevention and resolution of technical issues as provided for in the applicable Agreement;
- 2.4. The purpose of the Processing is to provide Services to Customer under the Agreement and the detection, prevention and resolution of technical issues as provided for in the applicable Agreement and any purposes compatible therewith;
- 2.5. The type of Personal Data Processed is any Personal Data provided or made available to BMIT by or on behalf of Customer or any End-user through the use or provision of the Services; and
- 2.6. The categories of Data Subjects are those whose Personal Data are provided or made available to BMIT by or on behalf of Customer or any End-user through the use or provision of the Services, including staff, Customers, partners of Customer or End-users and any End-users who are individuals.

- 2.7. Limitations on Use: BMIT will Process Personal Data only: (a) in a manner consistent with documented instructions from Customer, which will include Processing (i) to provide the Services, (ii) as authorized or permitted under the Master Services Agreement, and (iii) consistent with other reasonable instructions of Customer; and (b) as required by applicable law, provided that BMIT will inform the Customer (unless prohibited by such applicable law or in the case of urgency) of the applicable legal requirement before Processing pursuant to such applicable law.
- 2.8. Customer Obligations: The Customer will not instruct BMIT to perform any Processing of Personal Data that violates any Data Protection or Privacy Law. The Customer represents and warrants that any Processing of Personal Data by BMIT performed in accordance with the Master Services Agreement does not and will not violate any Data Protection Law. BMIT may suspend Processing based upon any instructions given by the Customer that BMIT reasonably suspects violate Data Protection Law. The Customer will be solely liable for the legality of Processing, and, subject to the cooperation of BMIT as specified in this Addendum, for safeguarding the rights of Data Subjects. The Customer will promptly notify BMIT about any faults or irregularities that it discovers in any Processing by BMIT.
- 2.9. In respect of data which the Customer receives, stores, or transmits on or using the Customer Configuration (i) in addition to Customer's obligations stated in the Agreement, the Customer is responsible for the integrity, security, maintenance and appropriate protection of Customer Personal Data, and ensuring its compliance with any privacy laws and regulations applicable to its own Processing of the Customer Personal Data and its use of the Services, including Applicable Data Protection Law; (ii) Customer controls how Customer Personal Data is stored, classified, exchanged, or otherwise Processed when using the Services; (iii) Customer may select the territory in which it stores and Processes Customer Personal Data and may implement and maintain, or purchase supplementary services from BMIT, in order to put in place those technical and organizational security measures appropriate to the nature and volume of Customer Personal Data that Customer Processes using the Service.
- 2.10. Confidentiality: BMIT will ensure that persons authorized by BMIT to Process any Personal Data are subject to appropriate confidentiality obligations.
- 2.11. Security: BMIT will protect Personal Data in accordance with requirements under Data Protection Law, including by implementing appropriate technical and organizational measures designed to protect Personal Data against any Data Breach that will meet or exceed the requirements specified in BMIT's Information and Security Policy.
- 2.12. Return or Disposal: At the choice of the Customer, BMIT will delete or return (or will, if technically, operationally and legally possible, enable the Customer via the Services to delete or retrieve) all Personal Data after the end of the provision of Services unless any applicable legal obligation or right requires the storage of such Personal Data by BMIT.

### **3. Data Processing Assistance:**

- 3.1. Data Subject's Rights Assistance: Taking into account the nature of the Processing of Personal Data by BMIT under the Master Services Agreement or where applicable, the Cloud Terms and Conditions, BMIT will provide reasonable assistance to the Customer by appropriate technical and organizational measures, insofar as possible and as necessary, for the fulfilment of the Customer obligations to respond to requests for exercising Data Subject's rights under Chapter III of the GDPR with respect to Personal Data solely to the extent that the Customer does not have the ability to address such Data Subject request without such assistance.
- 3.2. Security Assistance. To assist the Customer in its efforts to ensure compliance with the security requirements under Article 32 of the GDPR, BMIT has made available to the Customer its Information and Security Policy found at URL <https://www.bmit.com.mt/privacy/>
- 3.3. Data Protection Impact Assessment Assistance. The Customer acknowledges that BMIT has no knowledge of the Customer Personal Data received, stored, or transmitted on or using the Customer Configuration. Taking into account the nature of BMIT's Processing of Personal Data and the information available to BMIT, BMIT will provide reasonable assistance to the Customer, at Customer's expense, as required for the Customer to comply with its obligations under Articles 35 and 36 of the GDPR in connection with BMIT's Processing of Personal Data under the Master Services Agreement or, where applicable, the Cloud Terms and Conditions.
- 3.4. Personal Data Breach Notice and Assistance. BMIT will notify the Customer without undue delay after becoming aware of a Personal Data Breach. Taking into account the nature of Processing and the information available to BMIT, BMIT will provide reasonable assistance to the Customer as may be necessary for the Customer to satisfy any notification obligations required under Articles 33 or 34 of the GDPR related to any Personal Data Breach.

### **4. Audits.**

- 4.1 BMIT will allow for and contribute to audits, including inspections and as required or permitted under the Standard Contractual Clauses, conducted by the Customer or another auditor mandated by the Customer that is reasonably acceptable to BMIT in accordance with the terms of this clause 4 throughout the validity of the Master Services Agreement or, where applicable, the Cloud Terms and Conditions and for a further period of one year. Any such audit must occur during BMIT's normal business hours and will be permitted only to the extent required for the Customer to assess BMIT's compliance with this Addendum.

- 4.2 In connection with any such audit, the Customer will ensure that the auditor will: (a) review any information on BMIT's premises; (b) observe reasonable on-site access and other restrictions reasonably imposed by BMIT; (c) comply with BMIT's on-site policies and procedures, and (d) not unreasonably interfere with BMIT's business activities. BMIT reserves the right to restrict or suspend any audit in the event of any breach of the conditions specified in this clause. The Customer auditor will not be entitled to access information subject to third-party confidentiality obligations.
- 4.3 The Customer will provide written communication of any audit findings to BMIT, and the results of the audit will be the confidential information of BMIT.
- 4.4 Insofar as this is possible and allowed, the Customer will provide no less than fifteen (15) days' advance notice of its request for any such audit, and will cooperate in good faith with BMIT to schedule any such audit on a mutually agreed upon date and time (such agreement not to be unreasonably withheld by either party).

## **5. Sub-processors**

- 5.1 The Customer authorizes BMIT to use BMIT's affiliates and third-party Sub-processors to Process Personal Data in connection with the provision of Services to the Customer (hereinafter 'Sub-processor'). BMIT will inform the Customer in writing of any intended changes concerning the addition or replacement of its Sub-processors, and provide the Customer with the opportunity to object to such changes. If the Customer objects to any Sub-processor, BMIT may terminate the Master Services Agreement in accordance with the procedure set out in clause 5.3 of the Master Services Agreement or, where applicable, terminate Cloud Services in accordance the procedures set in the Cloud Terms and Conditions. Any terminate resulting from this clause shall be without liability to either party. BMIT will impose data protection obligations upon any Sub-processor that are no less protective than those included in this Addendum.

## **6. Data Transfers**

- 6.1 BMIT is located within the EU. However, to the extent that Personal Data may be transferred to, stored and/or processed in any country in which BMIT, its affiliates or its Sub-processors maintain facilities outside of the EU, the European Economic Area or Switzerland that has not received a binding adequacy decision in accordance with applicable Data Protection Legislation (hereinafter a 'Third Country'), BMIT will conduct such transfer: (a) pursuant to the EU Standard Contractual Clauses which may be applicable from time to time and which, at the time of signature, are available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>; or (b) any other data transfer mechanism permitted under applicable Data Protection Legislation.

**7. MISCELLANEOUS**

- 7.1. Customer affiliates: To the extent that BMIT may process Personal Data on behalf of the Customer affiliates in accordance with the Master Services Agreement, the Customer enters into this Addendum on behalf of itself and as agent for its affiliates, and any references to the Customer under this Addendum shall include the Customer and its affiliates, provided however that the Customer shall be the sole entity which may enforce this Addendum on its own behalf and on behalf of its affiliates.
- 7.2. Original Copies of this Addendum: This Addendum may be executed in several counterparts (including delivery via electronic mail), each of which will be deemed to be an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have had their authorised representatives execute this Addendum:



\_\_\_\_\_  
Mr Nick Tonna  
CCO  
on behalf of BMIT Ltd.

\_\_\_\_\_  
Mr/Ms \_\_\_\_\_  
\_\_\_\_\_  
on behalf of \_\_\_\_\_

Date: