



## **MASTER SERVICES AGREEMENT**

This Master Services Agreement ("**Master Agreement**") is entered into (and accordingly shall become legally binding upon the Parties) on:

*Date on Master Services Agreement  
Signature Form or first BMIT Service -  
related Form*

BETWEEN

**BMIT Limited**, having company registration number **C 39594**, whose registered office is at **Level 2, Block SCM-02, Smart City, SCM 1001, Malta** a company duly incorporated under the laws of Malta ("**BMIT**" or "**Service Provider**");

AND

**CUSTOMER**,

**WHEREAS** the Service Provider is in the business of, inter alia, providing data centre, cloud and managed ICT services as well as related services including hosting, asset lease, and Internet connectivity.

**WHEREAS** the Customer wishes to avail itself of the Services provided by the Service Provider, subject to the general terms and conditions of this Agreement.

**WHEREAS** the Service Provider agrees to provide the Services to the Customer subject to the general terms and conditions of this Agreement.

**WHEREAS** the Customer is entering into this Agreement in good faith and declares to be duly authorised and where applicable licensed, approved and certified by the relevant regulatory body to conduct its business operation, if such licensing and certification is required for the purpose of undertaking business, and agrees to submit to the Service Provider, upon request, all material information pertinent to its ability to enter into this Agreement to enable the Service Provider to assess the risk of incurring any Loss.

**WHEREAS** any Annexes, as listed in the most recent Master Services Agreement Signature Form agreed between the parties, shall form an integral part of this Master Agreement and shall be construed accordingly.

**NOW, THEREFORE, IN VIRTUE OF THIS AGREEMENT AND BY EXECUTION OF ONE OR MORE SERVICE ORDERS WHICH MAY BE AGREED UPON FROM TIME TO TIME BETWEEN THE PARTIES, EACH OF WHICH SHALL BE ATTACHED AS AN ANNEX TO THIS AGREEMENT (EACH A "SERVICE ORDER" OR "SO"), THE PARTIES HERETO AGREE AND COVENANT AS FOLLOWS:**

## 1. DEFINITIONS

### 1.1. Definitions. For the purposes of the Agreement:

- 1.1.1. **"Agreement"** shall mean this Master Agreement and all appendices, annexes, schedules, service orders hereto, including any amendments thereof, and any other document incorporated in this Master Agreement, whether explicitly or by reference;
- 1.1.2. **"Authorised Representative"** shall mean a person who is entrusted in writing by the Customer or by the Service Provider to act on their respective behalves, and **"Authorised Representatives"** should be construed accordingly;
- 1.1.3. **"Authority"** shall mean any competent authority, established and empowered by law and **"Authorities"** should be construed accordingly;
- 1.1.4. **"Business Day"** shall mean any day, other than a Saturday, Sunday or a public holiday in Malta;
- 1.1.5. **"Commencement Date"** shall mean the start date of this agreement as defined in the Service Order Form;
- 1.1.6. **"Confidential Information"** or **"Propriety Information"** shall mean any and all technical, business and other information that is not generally known in public or readily available for public consumption and that has been exchanged between the Parties in order to conduct the agreed Services and is either specifically designated as confidential or has specific business value, economic or otherwise, to the owner of such information from not being generally known to the public or to other Persons who can obtain value from its disclosure or use such as, but without limitation, customer lists, pricing strategies, agreed terms and conditions of Services and/or details of IT operational environments;
- 1.1.7. **"Client"** shall mean a client or customer of the Customer and **"Clients"** should be construed accordingly;
- 1.1.8. **"Credit"** shall mean the sum that may be payable by the Service Provider to the Customer in circumstances set out in the respective Service Levels for a specific Service;
- 1.1.9. **"Data Centre Floor"** shall mean an enclosed location within the Service Provider's premises that is equipped with all facilities to accommodate computing resources that are connected to the Network and **"Data Centre Floors"** should be construed accordingly;
- 1.1.10. **"Effective Date"** shall mean the date of signing of this Agreement by both Parties as set out at the top of the second page of this Agreement;
- 1.1.11. **"Force Majeure"** shall mean circumstances entirely beyond the control of the Party claiming Force Majeure and shall include, but shall not be limited to, Acts of God, war, flood, fire, explosion, sabotage, accident, strikes, embargo, riot, civil commotion, boycott and third party labour disputes which directly affect the relevant Party's obligations under this Agreement;
- 1.1.12. **"Internet"** shall mean a global data communications network having a collection of computing resources connected to it which are co-operatively using a network by sharing a common addressing scheme and data communication protocols;
- 1.1.13. **"Loss"** shall include any and all loss of revenue, cost, damage, expense, liability, penalty, fine, or any similar charge, fee or expenditure;
- 1.1.14. **"Party"** shall mean either the Customer or the Service Provider as the case may be and **"Parties"** shall mean both of them;
- 1.1.15. **"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;
- 1.1.16. **"Servers"** shall mean the hardware, software and communications systems owned or leased by the Customer or by Clients which may be set up from time to time in the Data Centre Floor;

- 1.1.17. **"Service Fees"** shall mean the fees that the Customer agrees to pay to the Service Provider for the provision of the Services, as specified in the Service Order(s) that is, or may from time to time become, annexed to this Agreement;
  - 1.1.18. **"Service Levels"** shall mean those service and quality standards for each of the Services provided by the Service Provider and as outlined in the relevant Annex to this Agreement;
  - 1.1.19. **"Service Order"** means any request submitted and confirmed by the Customer to the Service Provider for Services, whether such order is submitted online through the Service Provider's website, telephone or written order form and **"Service Orders"** shall be construed accordingly;
  - 1.1.20. **"Service Partner"** shall mean any legal entity that has a direct business relationship with the Service Provider and is entrusted to perform, partly or wholly, any or all of the Services in accordance with the provisions of this Agreement;
  - 1.1.21. **"Services"** shall mean the set of functions and features or work deliverables which the Customer procures from the Service Provider pursuant to this Agreement and **"Service"** should be construed accordingly;
  - 1.1.22. **"Standard Business Hours"** shall mean 0800h to 1700h CET on a Business Day;
  - 1.1.23. **"Term"** shall have the meaning given to it in sub-clause 5.1 of this Agreement;
  - 1.1.24. **"Terms of Service"** means the specific terms and conditions that govern the provision of a Service that is delivered by the Service Provider, as the same may be modified, altered or amended from time to time by the Service Provider.
- 1.2. In all their dealings in relation to this Agreement or otherwise, the Parties undertake and agree to act at all times in accordance with the law and in good faith.
  - 1.3. In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing one gender include all other genders.
  - 1.4. In this Agreement references to days shall mean calendar days.
  - 1.5. In the event of any disagreement, contradiction or ambiguity arising in relation to the terms of this Master Agreement and any of the Annexes the provisions of the relevant Annex shall be applied.
  - 1.6. Words defined in this Agreement shall have the same meaning in the Annexes if stated therein and capitalized.
  - 1.7. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded unless specifically referred to in this Agreement.
  - 1.8. No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each of the parties hereto, and no waiver of any provision of this Agreement, nor consent to any departure by any of the parties hereto, shall be effective unless it is in writing and signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder or under any related document shall operate as a waiver thereof by such party, nor shall any single or partial exercise of any right hereunder or under any other related document preclude any other or further exercise thereof or the exercise of any other right.

## 2. SUPPLY OF SERVICES

- 2.1. **Supply of Services.** The Service Provider shall supply the Services to the Customer as specified in the relevant Service Order and subject to the relevant Terms of Service for each Service as defined in the relevant annex appended to this Master Agreement. The Service Provider may provision the Service or Services from any of its data centres and may from time to time re-provision the Services from different data centres provided the same is at no cost, detriment or inconvenience whatsoever to the Customer.
- 2.2. **Increase or Decrease of Services.** From time to time, the Customer may, subject to agreement with the Service Provider, increase or decrease the quantity and / or type of Services required. In such cases a new Service Order is to be annexed to this Master Agreement and signed by the Parties. Such Service Order will,

unless expressly stated otherwise in the relevant Service Order, override any existing Service Orders. Until such new Service Order is signed, the Service Provider will continue to provide the Services established in the most recent Service Order and continue to charge the Customer for such Services accordingly.

The Customer undertakes and agrees to notify the Service Provider, in accordance with the provisions of this Agreement, its intention to increase or decrease the Services as follows:

- (a) in the case of an increase of services, at least five (5) days before the same increase is due to take effect;
- (b) in the case of a decrease of services, at least ninety (90) days before the same decrease is due to take effect;

Accordingly, where such notification of such increased or decreased Services is not provided, the Service Provider reserves the right to charge a reasonable service charge before increasing or decreasing the Services as requested by the Customer.

**PROVIDED THAT**, in the event that the Customer opts to decrease the Services, it is understood and agreed that all service discounts that may, from time to time, have been given to the Customer based on the volume of Services shall be cancelled with effect from the date of reduction of Services and, thereupon, the current applicable rates shall apply and shall be payable by the Customer. It is, furthermore, agreed that any penalties or other Losses that may have been incurred by the Service Provider as a result of the Customer's decision to reduce the Services shall be borne by the Customer and shall, accordingly, be settled by the Customer promptly as soon as it is notified by the Service Provider of such penalties or losses.

- 2.3. **Hours of Operation.** The hours of operation shall be 24 hours daily. Any changes to the service hours shall be subject to the mutual agreement of the Parties.
- 2.4. **Service Levels.** The Service Provider undertakes to use all commercially reasonable endeavours to ensure that the Service Levels for each of its Services are met. Such Service Levels are specified in the relevant Terms of Service for each Service.
- 2.5. **Fee Credits.** The Customer shall be entitled to Credits in the circumstances and at the levels as specified in the relevant Terms of Service established for each of the Services being availed of by the Customer.
- 2.6. **Usage of Service Partner.** The Service Provider reserves the right to perform any of the obligations or exercise any of the rights under this Agreement either itself or through a Service Partner, but shall in either case remain fully responsible and liable towards the Customer for any such obligations in accordance with the Agreement.
- 2.7. **Additional Support Services.** Any support service that is not specifically contracted for by the Customer and is performed by the Service Provider, on the specific request of the Customer and subject to agreement with the Service Provider, will, in default of express written agreement to the contrary, be chargeable according to the rate established in the relevant Service Order Form.
- 2.8. **Due Diligence Procedure.** Subject to any applicable confidentiality or data protection laws, except to the extent that such laws are overridden by anti-money laundering or counter-terrorism financing laws, the Customer hereby acknowledges that the Service Provider shall conduct any and all necessary know-your-customer and due diligence procedures prior to the coming into force of this Agreement. The Customer further acknowledges that such procedures shall be carried out by the Service Provider's trusted third-party suppliers.

The Customer shall, upon request by the Service Provider's trusted third-party suppliers, provide any information and documents necessary for compliance with applicable anti-money laundering or counter-terrorism financing laws including, without limitation, any laws imposing know-your-customer or other identification checks upon the Service Provider. Any information and/or documents received by the Service Provider's trusted third-party suppliers shall be used solely for the purposes of complying with applicable anti-money laundering or counter-terrorism financing laws.

The Customer further acknowledges that, pursuant to such Due Diligence Procedures, the Service Provider may decline to perform any obligations contained within this Agreement and unilaterally terminate the same Agreement without notice being given to the Customer. The Customer further agrees that in the event of

such termination, the Service Provider shall not be in any way liable for any losses or damages sustained by the Customer.

2.9. **Warranties & Limitation of Liability.** Unless otherwise provided herein:

- (a) the Services are provided on an “as is” basis, without any other warranties or conditions, express or implied, including, but not limited to, those arising by law, statute, usage of trade, course of dealing or otherwise;
- (b) the Service Provider warrants that its Services will be performed (i) with professional care and skill, in a manner consistent with industry practices reasonably applicable to the performance thereof; (ii) at least at the same level of service as provided by the Service Provider generally to its other customers for the same services; and (iii) subject to the established Service Levels specific to each Service being availed of by the Customer, as defined in the relevant Terms of Service for each such Service;
- (c) the Service Provider does not warrant that the Services will meet any of the Customer’s requirements and/or that the Services will be supplied uninterrupted, save for the provisions of the Service Levels specific to each Service being availed of by the Customer and any other express obligations stating the contrary of the Service Provider in this respect contained in this Agreement, and/or will be capable of integration with the Customer’s current or any future system;

Furthermore, save for the provisions of the Service Levels specific to each Service being availed of by the Customer and save for any other express terms stating the contrary and contained in this Agreement, the Service Provider does not warrant that the use of the Service including any use of software will operate error free and that the use of the Service or any software will identify or filter out all known spam, viruses or other programming routines. The Service Provider 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. The Service Provider 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;

- (d) Nothing in this Agreement shall **(A)** be construed as limiting the liability of either party for, (i) personal injury or death resulting from the negligence of a party or its employees, and (ii) any liability of either party which cannot be excluded by law. **(B)** Except as set out in (A) but notwithstanding any other provision, neither party shall be liable for any loss (whether direct or indirect) of profits, revenues, business, goodwill, anticipated savings, customers, data or arising out of interference with business or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or in connection with this Agreement or any other cause whatsoever, including breach of contract, breach of warranty, tort (including negligence), or strict liability. **(C)** Subject to (A), (B), Service Provider’s total aggregate liability in respect of any claim, loss or damage, whether arising from tort (including negligence), breach of contract, breach of warranty or otherwise under or in connection with this agreement shall in no event exceed 100% of all charges paid during the 12-month period immediately prior to which the relevant claim arises. (less the amount of any Credit(s) already paid or payable in respect of such breach).
- (e) subject to the following sub-clause 2.9(f) in any event in which, notwithstanding clause 2.9(d) above, the Service Provider has breached the provisions of this Agreement and such breach relates to a breach of the Services Levels for a particular Service then the Customer’s sole remedy in respect of such breach shall be its entitlement to the Credit payable in respect of that breach of the Service Levels and no further claim for damages or any other remedy (other than the exercise of an express right of termination provided for in this Agreement) shall subsist;
- (f) The Customer will be deemed to have accepted such Services unless the Customer notifies the Service Provider within forty-five (45) days after performance of the relevant Services of any breach of the foregoing warranties in respect of such Services.

The foregoing warranties shall not apply to performance issues or defects in the Services (i) caused by Force Majeure; (ii) that resulted from any actions or inactions of the Customer; or (iii) that resulted from the Customer's equipment or any third-party equipment not within the control of the Company.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, THE SERVICE PROVIDER 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 THE SERVICE PROVIDER 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. THE SERVICE PROVIDER DOES NOT WARRANT 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.

### 3. USE OF SERVICES

3.1. **Use of Services by the Customer.** The Customer undertakes to use the Services strictly in accordance with:

- (a) the terms and conditions of this Agreement and such other conditions of diligent use as may be reasonable and may from time to time be notified in writing to the Customer for the purpose of the continuous and/or secure provision of the Services; and
- (b) applicable laws including and in particular Maltese laws, orders and regulations in force from time to time and as may be established by the relevant Authority that is empowered by law to regulate the business operations of the Customer.

The Customer undertakes and agrees to promptly inform and notify the Service Provider of any and all changes in circumstances and/or changes in applicable legislation that the Customer may reasonably become aware of, whether applying to it, to its users and/or Clients, that have or are likely to have a bearing or that are likely, otherwise, to affect its ability to enter into this Agreement. For the purposes of this clause, the phrase 'changes in circumstances' shall mean changes in legislation/rules/regulations/orders that may cause the Service Provider to incur a Loss as a result of the provision or continued provision of Services to the Customer. The provisions of this sub-clause shall apply mutatis mutandis to the Service Provider who shall likewise inform and notify the Customer of any and all changes in circumstances and/or changes in applicable legislation/rules/regulations/orders that may cause the Customer to incur a Loss as a result of the use or continued use of Services by the Customer, that have or are likely to have a bearing or that are likely, otherwise, to affect its ability to enter into this Agreement.

3.2. **Use of Services by Customer's Clients.** The Customer will request that its Clients and users use the Services strictly in accordance with the provisions of sub-clause 3.1 hereof. The Customer undertakes and agrees to request that each of its Clients and users be in possession of all relevant permissions, approvals, certifications, permits and licenses required under applicable law, necessary for each such Client or user to operate his business and required for each such Client or user to operate through the Service Provider's Network and to avail himself of the Services; and, if so required by the Service Provider, such Client or user shall supply documentation proving the existence of the same. The Customer shall promptly, following it becoming aware of the same, notify the Service Provider in case any of the said permissions, approvals, certifications, permits or licenses is withdrawn, cancelled, suspended or in any other manner made inoperative by the relevant Authorities in Malta.

3.3. **Illicit Use of Services.** Without prejudice to any obligation under any applicable law, in the event that either of the Parties becomes aware that any third party is utilising the Services or any part thereof in an irresponsible, unlawful, illicit and/or illegal manner, it is hereby agreed that:

- 3.3.1. the Parties shall promptly notify each other with a view to coordinating their efforts in order to identify and isolate such irresponsible, illicit, unlawful or illegal activity with a view to filtering, blocking or, otherwise, taking such necessary steps to ensure business continuity, Network integrity and minimal disturbance to other clients/customers/users;



- 3.3.2. the Customer must take prompt action to remedy the situation, and if the Customer cannot take prompt action or, otherwise, does not respond within twenty-four (24) hours from written notification to the Customer requesting that the Customer remedy the situation in an effective manner, then the Service Provider shall, without prejudice to any other right competent to it in terms of law or in terms of this Agreement, be authorised and shall, consequently, be entitled to remove, block or disconnect the offending systems or facilities itself at the proper and reasonable expense of the Customer without the requirement of further formalities.

In the event that the Customer cannot for any reason whatsoever, within one (1) clear Business Day, from written notification given under the preceding sub-clause, rectify the problem that continues to be of disturbance to the Service Provider's overall business, then the Service Provider shall, without prejudice to any other right competent to it in terms of law or in terms of this Agreement, be authorised and shall, consequently, be entitled to remove, block or disconnect the offending systems or facilities only (to the extent reasonably required only) itself at the proper and reasonable expense of the Customer without the requirement of further formalities.

- 3.4. **Indemnification.** The Customer shall defend, indemnify and hold harmless the Service Provider, 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 "**the Service Provider 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 Service Provider Indemnitees may suffer, incur or sustain resulting from or arising out of (i) the Customer's breach of any representation, warranty, or covenant contained in the Agreement, (ii) violation by the Customer or any of its officers, directors, employees or agents of the Acceptable Use Policy or any applicable law, (iii) 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 of the Services in combination with hardware, software or content not provided by the Service Provider, (iv) claims or actions by third parties relating to or arising out of the Customer's use of the Services.

The Customer undertakes and binds itself to fully indemnify and to keep and maintain indemnified the Service Provider in any event in which any breach or non-observance of clause 3.1, 3.2 and 3.3 by the Customer for whatsoever reason causes any Loss or liability (including, where the context so allows, claims, demands, proceedings, damages, debts, dues, losses, out-goings, costs, actions and expenses) to the Service Provider. This obligation shall survive the expiry or earlier termination of this Agreement for any reason whatsoever for five (5) years thereafter.

The indemnification obligations upon the Customer contained in the aforementioned provisions of this sub-clause 3.4 shall be subject to a duty upon the Service Provider to take all reasonable steps to reduce, and not to take any unreasonable steps to increase, the indemnified losses, damages, costs, liabilities and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees).

- 3.5. **Customer Authorised Representative.** The Service Provider shall communicate, respond or take orders related to the Services only through the Customer's Authorised Representative/s. For the purposes of this sub-clause the Customer's Authorised Representative/s is established in the Service Order Form.

#### 4. FEES AND PAYMENT

- 4.1. **Service Fees.** In consideration for the supply of the Services under this Agreement, the Customer hereby agrees to pay the Service Provider the Service Fees and any other charges, where applicable or mutually agreed, as the case may be, as specified in Annex 1 – Service Order. Such fees shall only include those Services explicitly contracted by the Customer as specified in Annex 1 – Service Order annexed to this agreement. The Service Fees shall come into force on the Commencement Date.
- 4.2. **Set-up Fees.** The Customer undertakes and agrees to pay any one-time fees related with the provisioning of the Service(s), as specified in Annex 1 – Service Order.
- 4.3. **Invoicing.** The Service Provider shall issue an invoice specifying the fees and charges to be paid by the Customer according to the billing frequency specified in Annex 1 – Service Order Form. The Customer shall settle the invoice according to the payment terms established in the same Service Order Form. Interest (at the annual rate of three per cent (3%) above the base rate set by the Central Bank of Malta from time to



time on the basis of a 365 day year) shall accrue on any amounts not paid by the Customer in accordance with this sub-clause **PROVIDED THAT**, unless the interest has already been paid by the Customer, the Service Provider serves written notice and demand on the Customer for such interest due no later than thirty (30) days after such interest has ceased to accrue (in default of which such right to interest shall, for the avoidance of doubt, cease in full).

- 4.4. **Security Deposit.** Provided that only in respect of the first invoice this will include a request for three (3) months Service Fees to be payable in advance and payable within ten (10) business days from the Effective Date of this Agreement or from the date of issuance of the said first invoice, whichever is the later. It is agreed that the three months' Service Fees paid in advance as provided herein shall be retained by the Service Provider as a deposit for the entire duration of the Agreement as security for payment of the Service Fees. Accordingly, it is agreed that, in the event that the Customer shall fail to settle the Service Fees or any part thereof or shall fail to settle any other payment due in terms of this Agreement within fifteen (15) running days from when such payments are due, the Service Provider shall, in addition and without prejudice to any other rights competent to it in terms of Law or in terms of this Agreement, have the right to utilize such deposit in part or in full to settle the amounts pending without the requirement of further formalities. The Customer, furthermore, undertakes and agrees not to allow the said deposit to fall below the value of the Service Fees payable for three (3) months and, accordingly, the Customer will promptly remit such funds to the Service Provider to cause the said deposit to be replenished. Provided all payments due by the Customer in terms of this Agreement shall have been settled in full, the said deposit shall be promptly refunded to the Customer upon the expiry or earlier determination of this Agreement for whatsoever reason.
- 4.5. **Invoicing Currency.** All invoices shall be issued in Euros. Should the Customer wish to pay in any other currency, it may do so provided the Customer pays the exchange rate difference and/or any bank charges incurred by the Service Provider.
- 4.6. **Applicable Taxes.** The Service Fees and all other fees or charges payable by the Customer to the Service Provider are quoted exclusive of Value Added Tax (VAT) and any other tax, duty, levy or similar charge which may from time to time be imposed in relation to the Services. All such taxes will be added to Company's invoices for the Service Fees as separate charges to be paid by Customer. The Customer shall make payments of the Service Fees and other charges due in terms of this Agreement, free and clear of any set off or other deduction and together with all applicable VAT and any other tax, duty, levy or similar charge from time to time imposed in terms of law. The Customer will provide the Service Provider any information that is reasonably requested, including the Customer's VAT identification number, to determine whether the Service Provider is obliged to collect VAT from the Customer.
- 4.7. **Dishonoured Payments.** If a payment is dishonoured or cancelled for any reason whatsoever, the Service Provider may, in addition and without prejudice to any other rights competent to it in terms of Law or in terms of this Agreement, request the Customer to pay to the Service Provider any resulting bank or other charges, costs or expenses incurred by the Service Provider.
- 4.8. **Invoicing of Revised Services.** In the event that the Customer varies the amount/quantity of the Services, the applicable revised Services Fees and other charges shall be included in the next invoice and shall remain applicable until the Customer makes a new variation order in accordance with the provisions of this Agreement.
- 4.9. **No Refund of Payments.** 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.
- 4.10. **Suspension or Termination of Services on Default of Payment.** Without prejudice to any rights competent to the Service Provider in terms of this Agreement and/or in virtue of Law, in any event in which the Customer fails to pay the agreed Service Fees or any part thereof within fifteen (15) days after the payment due date of the invoice then the Service Provider will immediately call upon the Customer to pay the amounts due and may, at its sole discretion, suspend the Customer's Services. If such matter is not resolved within a maximum of ninety (90) calendar days from such suspension of service then this Agreement is to be deemed as terminated ipso jure in view of a material breach of obligations on the part of the Customer and the Customer will be deemed as having renounced to any title to or possession of any equipment placed in the Data Centre Floors, or of any equipment belonging to the Service Provider that may have been placed at the

Customer's premises, and the Service Provider may proceed to resume possession of such equipment, and to dispose of or, otherwise, utilise same in any manner at the Service Provider's discretion in order to obtain satisfaction of its credit against the Customer, as the case may be, without such resumption being in any manner deemed or interpreted as being an act of spoliation in regard to the Customer and this without prejudice to the right to claim any arising damages and/or any dues then outstanding in terms of this Agreement. The Service Provider shall also, unless otherwise specified at Law or pursuant to a lawful order by any competent Authority unilaterally, remove, erase and destroy all Customer Content upon taking possession or re-possession of the said equipment. The ninety (90) days term established in Clause 4.10 will not be applicable to the instance of termination pursuant to this Clause 4.10.

- 4.11. **Reactivation of Services.** In the event of a suspension of the Services, upon a reactivation request by the Customer, the Customer shall pay the Service Provider a reactivation fee in addition to full payment of the outstanding balance due. Reactivation of services will only be performed during the Service Provider's standard business hours.

## 5. TERM AND TERMINATION

- 5.1. **Initial Term of Agreement.** This Agreement shall come into force on the Commencement Date as stated in Annex 1 – Service Order Form, irrespective of whether the Customer has started using the services or not, and shall continue for a period as established in the Service Order Form.

- 5.2. **Renewal Period:** Thereafter, this Agreement shall be automatically renewed for subsequent Renewal Periods as laid out in Annex 1 – Service Order Form, under the same terms and conditions unless either Party informs the other of its intention not to renew the Agreement by giving notice in writing to the other Party at least ninety (90) Business Days' from the date of expiry of the current term of the Agreement.

- 5.3. **Termination due to Breach.** Notwithstanding anything stated in this Agreement, either Party shall have the right to terminate this Agreement, upon no less than ten (10) Business Days prior notice, if any one or more of the following events occur:

- (a) if the other Party is adjudged bankrupt or has commenced or is placed into liquidation proceedings; or
- (b) if the other Party gives or has given any false or misleading information of a material nature or knowingly makes any representation of a material nature in connection with obtaining the Agreement or at any time during the continuation of the Agreement; or
- (c) if the other Party is in breach of any of its obligations under this Agreement and such breach is not, if capable of remedy, remedied within ten (10) Business Days from receiving a written notice from the other Party regarding such breach; or
- (d) if any third party institutes any action (including without limitation the commencement of legal proceedings against a Party) and such action is likely to affect the business of the requesting Party in a material way; or
- (e) if, as a result of the continued provision of Services and a correlated risk of an action by third party, the Service Provider will or is reasonably likely to incur a Loss; or
- (f) if the other Party performs its obligations in bad faith and/or in an intentional abusive and/or grossly negligent manner and/or, in any other way, does not perform such obligations in a bona fide manner; or
- (g) an event of Force Majeure subsists, or several events of Force Majeure in aggregate subsist, for 20 days or more during the Term.

The Service Provider can terminate this Agreement without notice being given to the Customer if the Customer ceases for any reason whatsoever to be licensed under applicable Maltese laws.

- 5.4. **Effects of Termination.** Upon the expiration or earlier termination of this Agreement, whichever is the case:
- (a) the Customer shall promptly stop making use of the Services;

- (b) unless otherwise specified at Law or pursuant to a lawful order by any competent Authority or under this Agreement including Clause 4.10, Customer Content will be removed, erased and destroyed within ninety (90) days after the said termination or expiration;
- (c) the Parties shall promptly return to each other any and all things ( with the specific exclusion of Customer Content) however including, but not limited to, Confidential Information and/or all physical media provided and printed materials) in their possession in virtue of this Agreement and belonging to the other Party ; and
- (d) all outstanding invoices and fees due shall be settled without undue delay.

## 6. INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY AND DATA PROTECTION

- 6.1. **Intellectual Property Rights.** The Parties hereby acknowledge and agree that they retain all rights to their respective data and that no intellectual property right is transferred or assigned in any way under this Agreement.
- 6.2. **Copyrights and Trademarks.** In particular, and without prejudice to the generality of the above, the Customer acknowledges that any and all copyright, trademarks, trade names, patents, service marks, logos, domain names and other intellectual property rights of whatsoever nature of the Service Provider subsisting in or used in connection with the Services or otherwise with this Agreement shall be and remain the sole property of the Service Provider. The Customer shall not during or at any time after the expiry or termination of this Agreement (whether in whole or with respect to support only) in any way question or, otherwise, dispute the ownership of the same by the Service Provider in connection with this Agreement and its subject-matter. Likewise, any copyright, trademarks, trade names, patents, service marks, logos, domain names and other intellectual property rights of whatsoever nature belonging to the Customer during the Term shall be and remain the sole property of the Customer. The Service Provider shall not during or at any time after the expiry or termination of this Agreement (whether in whole or with respect to support only) in any way question or, otherwise, dispute the ownership of the same by the Customer in connection with this Agreement and its subject-matter.
- 6.3. **Confidential Information.** Either Party shall hold in strict confidence all Confidential Information relating to or provided by a Client and/or the other Party obtained in virtue of or otherwise relating to this Agreement and undertakes and binds itself not to divulge, communicate or make use of such information, whether directly or indirectly, whether for its own benefit or for the benefit of third parties, unless compelled by court order or by a lawful authority. **PROVIDED THAT** the Service Provider shall have the right to name the Customer as the Service Provider's client and vice versa. This obligation of confidentiality shall survive the termination of this Agreement for any reason whatsoever until such time as such information shall have otherwise legally entered the public domain.
- 6.4. **Data Protection.** The Customer acknowledges and agrees that the Service Provider will process and retain personal data, traffic data and other data (hereinafter collectively referred to as the 'Customer Data') related to the services being provided to it by the Service Provider in line with any applicable data processing and/or retention obligations and as described in Annex 19 – Data Processing Agreement. Furthermore,
- 6.4.1. The Customer also agrees and consents that the Customer Data, inter alia relating to its use of the services, including payments or lack thereof, will be retained and processed in line with the applicable data protection and retention legislation and that the Service Provider may disclose any of this:
- i. among the companies forming part of the GO/BMIT Group, inter alia including its parent and/or affiliated companies;
  - ii. with its sub-contractors and/or agents;
  - iii. between the Service Provider and other third parties including other authorised electronic communications Service Providers and operators, content providers, market research operators, and credit-rating agencies. The Customer acknowledges that such sharing of Customer Data is necessary for the purpose of providing better value and services as well as for fraud prevention, debts and credit referencing and to protect the legitimate interest of the Service Provider, its parent and/or affiliated companies and of other electronic

communications operators and third parties. The Service Provider commits to preserve all Customer's rights as data subject at all times;

- iv. if required to do so by law or in the good faith belief that any such preservation or disclosure is reasonably necessary to comply with legal process, enforce the terms of the agreement, respond to claims that any use of the services violates the rights of third-parties, or otherwise to protect the rights, property or personal safety of the Service Provider, its directors, officials, employees, users, sub-contractors, agents and/or the general public.
- 6.4.2. The Service Provider undertakes to ensure that all companies within the GO/BMIT Group as well as any and all third parties to whom the Customer Data is disclosed will only process the Customer Data in accordance with the Service Provider's instructions and on the Service Provider's behalf, and may further only use such data to the extent to which the Service Provider is itself entitled. All such companies and third parties will further be required by the Service Provider to meet the requirements of data protection and retention legislation to keep the information secure.
- 6.4.3. The Customer acknowledges and agrees that the Service Provider may further process the Customer Data for direct marketing purposes. Should the Customer wish the Service Provider to stop processing the Customer Data for direct marketing purposes, the Customer must so inform the Service Provider accordingly.
- 6.4.4. It shall at all times remain the Customer's responsibility to inform the Service Provider of any changes occurring in the Customer Data provided in order that the Service Provider may be able to take all reasonable measures to keep its records in his regard correct and up-to-date.
- 6.5. **Know-your-Customer and Due Diligence Processes.** Subject to any applicable confidentiality or data protection laws, except to the extent that such laws are overridden by anti-money laundering or counter-terrorism financing laws, the Customer hereby acknowledges that the Service Provider shall engage trusted third-parties for the purposes of conducting any and all necessary know-your-customer and due diligence procedures in fulfilment of its legal obligations and contractual requirements.

The Customer shall, upon request by the Service Provider's trusted third-party suppliers, provide any information and documents necessary for compliance with applicable anti-money laundering or counter-terrorism financing laws including, without limitation, any laws imposing know-your-customer or other identification checks upon the Service Provider. Any information and/or documents received by the Service Provider's trusted third-party suppliers shall be used solely for the purposes of complying with applicable anti-money laundering or counter-terrorism financing laws.

Failure by the Customer to provide such necessary personal data may result in the Service Provider declining to perform any obligations contained within this Agreement and unilaterally terminating the same Agreement without notice being given to the Customer. The Service Provider will impose data protection obligations upon any third-party supplier that are no less onerous than those included in this Agreement.

## 7. ACCESS RIGHTS

- 7.1. **Access Rights.** The Parties acknowledge and agree that the Maltese Courts or other relevant regulatory Authority empowered by law may request the Service Provider to grant access to the Customer's equipment or other physical or virtual assets owned or utilised by the Customer and operating within the Service Provider's premises, whether or not these are under direct control of the Service Provider. In such event, the Customer declares to be aware that it is the Service Provider's legal responsibility to afford the Maltese Courts and/or the requesting Authorities and their lawful representatives unlimited access to:
- (a) such Customer's servers and database systems, physical or virtual, and all ancillary related equipment and systems located at or operating from the Service Provider's premises;
  - (b) all of the Customer's equipment related to the gateway to the Internet located at the Service Provider's premises; and
  - (c) the office space and related facilities that the Service Provider may be providing to the Customer in terms of this Agreement; and

- (d) any footage recorded by the Service Provider's CCTV system, both within the Service Provider's data centre and outside the public perimeter of the facility, as per the Service Provider's internal policies and which may be available according to the retention period as established by the same Service Provider's policies.

The provisions of this Article 7.1 shall be without prejudice to any of the powers granted to the Maltese Courts or relevant regulatory Authority under Maltese law.

- 7.2. **Service Provider's Availability.** Any such inspection or access shall take place in the presence of one of the Service Provider's Authorised Representatives who shall be available for the above-mentioned inspection within forty-five (45) minutes from the time that the request is officially received.
- 7.3. **Customer's Obligations.** The Customer shall assume any and all obligations to give the Maltese Courts and/or the requesting Authorities and their lawful representatives access to the Customer's equipment. Should the Customer wish to be present for the above-mentioned, the Customer shall ensure that its Authorised Representative(s) shall be available for such inspection within forty-five (45) minutes from the time that the request is officially received.

## 8. FORCE MAJEURE

- 8.1. **No Liability.** Neither Party shall be liable for any default in performing any of its obligations hereunder if such default is caused by Force Majeure.
- 8.2. **Notification.** A Party seeking relief under this Article 8 shall, as soon as possible after the cause of Force Majeure and its effects upon its ability to perform its obligations become known to it, give written notice to the other Party of such cause of Force Majeure and its effects on its ability to perform. Notice shall also be given when this ground of relief ceases.

## 9. MISCELLANEOUS

- 9.1. **Governance/Entire Agreement.** This Agreement and its Annexes constitute the entire understanding between the Parties in relation to relevant subject-matter and, unless expressly stated otherwise hereunder, supersedes and extinguishes any prior oral or written agreement or representation and each Party hereby represents and warrants to the other Party that it has not been induced to enter into this Agreement and its Annexes as a result of any such prior oral or prior written agreement or prior representation. No addition or amendment to this Agreement or any of the Annexes thereto shall be effective unless it is in writing and signed by both Parties and/or their Authorised Representative/s.
- 9.2. **Severability.** If any of the provisions of this Agreement is held to be illegal, invalid or unenforceable, this shall not affect the legality, validity and/or enforceability of the other provisions of this Agreement which shall continue to be in full force.
- 9.3. **Assignment/Novation.** The Customer shall be entitled to assign or novate this Agreement to any member of its corporate group subject to the prior written consent of the Service Provider, which consent shall not be unreasonably withheld and/or delayed.
- 9.4. **Waiver.** No delay of omission by either Party to exercise or enforce any of the rights or part thereof under this Agreement shall constitute a waiver of such rights.
- 9.5. **Applicable Law.** This Agreement shall be governed exclusively by the laws of Malta .
- 9.6. **Dispute Resolution.** The Parties undertake and bind themselves to settle any dispute, controversy, claim or contention in relation to this Agreement that may arise between them amicably including with the help of mediation if necessary. If a question, dispute or difference shall arise between the Service Provider and the Customer in relation to this Agreement then either party may give the other written notice of the existence of such dispute and may call a dispute resolution meeting. Such meeting shall be held within fifteen (15) days of the date of such notice (unless otherwise agreed) and will be attended by suitable representatives of both parties. The purpose of the meeting shall be to review and agree, so far as is practicable, the action to be taken to resolve the dispute and the parties shall endeavour in good faith to reach an agreeable solution. In the event that an agreeable solution is not found within thirty (30) days, then the Parties agree to refer and resolve any unresolved dispute (including any matters relating to the determination of this Agreement)

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between them exclusively to the Courts of Malta, who shall have exclusive jurisdiction. This Clause is without prejudice to either of the rights or remedies of the Service Provider, provided by law or under this Agreement, including the right to seek or commence legal proceedings or take whatever action is available to it at law and seeking immediate preventative relief such as an injunction or the equivalent.

- 9.7. **Relationship.** The relationship between the Parties shall not be deemed to constitute a partnership between them. Nor is such a relationship exclusive and both parties are free to enter into other agreements with other third parties.
- 9.8. **Non-Solicitation.** The Customer covenants and agrees that during the Term and for twelve (12) months after the termination thereof, regardless of the reason for termination, the Customer will not, directly or indirectly, on its own behalf or on behalf of or in conjunction with any person or legal entity, recruit, solicit, or induce, or attempt to recruit, solicit, or induce, any employee of the Service Provider to terminate their employment relationship with the Company **PROVIDED THAT** the aforementioned covenant shall not prevent the Customer from responding to, interviewing and employing an employee of the Service Provider who responds, without the Customer having breached the aforementioned covenant, to a general advertisement for a position placed by or on behalf of the Customer.

## 10. NOTICES

- 10.1. **Notices.** All notices with respect to this Agreement shall be given in writing.
- 10.2. **Means of Communication of Notices.** Any communications by the Parties shall, unless otherwise provided herein, be deemed sufficiently made if sent by post, electronic mail or fax transmission to the address hereinafter specified and shall, unless otherwise provided herein, be deemed to have been made available to the other Party on the day on which such communications ought to have been delivered in due course of postal, electronic mail or fax transmission.
- 10.3. **Notices Contacts.** Notices shall be sent to the Contract Notices contacts as established in the most recent Customer Information Form.