



ANNEX A4 – PUBLIC CLOUD COMPUTING SERVICES TERMS & CONDITIONS

ANNEX A4 – PUBLIC CLOUD COMPUTING SERVICES TERMS & CONDITIONS

The following Terms and Conditions govern all Public Cloud Computing Services provided by BMIT Limited, its affiliates, successors and assigns (the "Service Provider" or "BMIT" or "BMIT Ltd./Limited") to its customers ("Customer") and contains the terms and conditions that govern a Customer's access to and use of the Services as defined below in clause A4-2. These Terms and Conditions are ancillary to the Master Agreement. Upon expiry or termination of the Master Agreement, these Terms and Conditions shall be deemed automatically terminated.

The definitions contained in the Master Agreement shall be equally applicable in this Annex A4 (inclusive of Annex A4A and Annex A4B) and shall bear the same meaning and have the same effect.

A4-1. **Additional Definitions.** For the purposes of this Annex the following additional definitions shall apply:

- (a) **"Acceptable Usage Policy"** means the policy currently available in Annex A12 as may be amended from time to time
- (b) **"Public Cloud Service"** shall for the purpose of this Annex be construed to include Cloud services and products sold by BMIT or other online computing infrastructural services or applications, and any associated licences or right to use any hardware or software, that is deployed on the Service Provider's infrastructure, together with the specified connectivity for providing the Service as more particularly described in the applicable service descriptions found at <https://www.bmit.com.mt/cloud-service-descriptions-terms/>.
- (c) **"End User"** means any Person who, via the Internet, accesses or uses the Public Cloud Services provided to the Customer.
- (d) **"Company Technology"** means BMIT's proprietary technology, including, without limitation, its 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 BMIT or licensed to BMIT 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 the Master Agreement by either party.
- (e) **"Network"** shall refer to the Service Provider's data communication network and all its associated equipment within its facility and including its connectivity to the Internet;
- (f) **"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.
- (g) **"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 any other means or facilities used by Customer.

- (h) **"Cloud Support"** means the outputs of technical Support Services provided by BMIT to the Customer during the subscription Term.
- (i) **"Support Personnel"** refers to Service Provider's employees and/or contractors assigned to carry out Cloud Support. Unless otherwise specifically agreed, the Service Provider will supply its Support Personnel with the required facilities and resources necessary for the provision of the Cloud Support Services.
- (j) **"BMIT Cloud Platform"** refers to BMIT owned and operated platforms or systems that enable or deliver the service to the Customer.
- (k) **"Third-Party Vendor Platform"** refers to third-party owned platforms or systems, that enable or deliver the service to the customer. BMIT does not manage or may have limited access on third-party vendor platforms.
- (l) **"Support Services"** means technical assistance aimed at helping a Customer pre-empt and/or resolve problems with specific symptoms encountered while using IT systems. Such Support Services are based on an agreed set of Service Deliverables and / or an agreed amount of effort, defined in hours of work, and the related fees payable for such effort as agreed between the parties and defined in any related Service Order Form.

A4-2. **Provision of Services.** BMIT will provide the Customer with the set of Cloud Services as may be specified in the Service Order or as available on the BMIT store found at <https://www.bmit.com.mt/>. BMIT 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 BMIT may not have tested or screened the third-party content, the use of any third-party content is at the Customer's sole risk.

A4-3. **Customer's Representations and Warranties.** The Customer hereby represents and warrants to BMIT, and agrees that during the Term the Customer will ensure that:

- (a) The 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, likenesses and all forms of intellectual property contained therein, without any obligation by BMIT to pay any fees, royalties, costs, expenses, residuals, guild payments or other compensation of any kind to any Person;
- (b) The Customer's use, publication and display of the Customer Content will not infringe any copyright, moral right, neighbouring right, sui generis right (topography and database rights), patent, design, 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) The 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) The 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) The Customer will use the Services only for business purposes and not for any family, household or personal use;
- (f) The 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, s/he routinely checks the accuracy, completeness, accessibility and retrievability of such uploaded Customer Content including any back up performed.

A4-4. **Customer Responsibilities.** The Customer is responsible for all activities that occur under his account on the Cloud Service, regardless of whether the activities are undertaken by him/her, employees or a third party (including contractors or agents) and, except to the extent caused by any breach of these Terms and Conditions and the Master Agreement, BMIT and its affiliates are not responsible for any action undertaken by the Customer or on behalf of the Customer.

The Customer will not use any product or service in excess of the applicable limits established for the Cloud Services in the service descriptions found at <https://www.bmit.com.mt/cloud-service-descriptions-terms/>. If Customer uses additional resources in excess of such applicable limits, BMIT may, without limiting its other rights or remedies, assess the Customer with additional fees or suspend or terminate the Services. Specifically, for the Cloud Infrastructure service, the Customer may use additional resources only within the limits defined by BMIT, and agrees to pay any additional usage as invoiced by BMIT in relation to such over usage.

Furthermore, the Customer agrees that it 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, libellous, 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, that it is not and may not impersonate or misrepresent as another person (including celebrities), entity, other Customer;
- (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 BMIT granted to Customer to make use of the Service.
- (l) Additionally, Customer is prohibited from undertaking any of the following actions:
 - i. anything that may impair, disrupt, interfere, affect BMIT'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, any technology measures or any service metering applications.

A4-5. License to Company and Proprietary Rights. The Customer hereby grants to BMIT 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 Service 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. Except for the rights expressly granted above, BMIT 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 clause A4-5, BMIT has no rights under these Terms and Conditions and the Master Agreement in relation to the Customer Content, including any related intellectual property rights and the Customer consents to the aforementioned use of the Customer Content by BMIT in order to provide the Service. BMIT may disclose the Customer Content to provide the Service or to comply with any request of a governmental or regulatory body.

Customer represents and warrants to BMIT that: (a) they or their licensors own all right, title, and interest in and to the Customer Content; (b) have all rights in the Customer Content necessary to grant the rights contemplated by these Terms and Conditions and by the Master Agreement; and (c) none of the Customer Content, or the Services will violate the Acceptable Usage Policy.

A4-6. Usage Rights. The Customer is granted by BMIT a limited, revocable, non-exclusive, non-transferrable usage right to do the following during the Term: (i) access and use the Services solely in accordance with these Terms and Conditions and the Master

Agreement; and (ii) copy and use the Customer Content solely in connection with the permitted use of the Services. The Customer will not directly or indirectly by any act or omission allow anyone or attempt to:

- (a) 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 are provided to you under a separate license that expressly permits the creation of derivative works);
- (b) 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
- (c) access or use the Service in a way intended to avoid incurring fees or exceeding usage limits or quotas.

All licenses granted under these Terms and Conditions and under the Master Agreement are conditional on your continued compliance of these Terms and Conditions and the Master Agreement and will immediately and automatically terminate if there is a failure to comply with any term or condition thereof. During and after the Term, Customer will not assert, nor will you authorize, assist, or encourage any third party to assert, against BMIT or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service used.

- A4-7. **Ownership of Rights on Service Improvement Suggestions.** If Customer provides any suggestions to BMIT or its affiliates, BMIT will own all right, title, and interest in and to the suggestions, even if such suggestions have been designated as confidential, and will be entitled to use the suggestions without restriction. The Customer hereby irrevocably assigns to BMIT all right, title, and interest in and to the suggestions and agrees to provide BMIT with any assistance it may require documenting, perfect, and maintain its rights in the suggestions.
- A4-8. **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 & Conditions regarding the use of Microsoft Software as defined in AnnexA4a.
- A4-9. **Additional Terms for Termination.** BMIT may suspend or terminate these Terms and Conditions and the Master Agreement and in either case delete or remove the Customer Content without any liability if:
- (a) 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 BMIT;
 - (b) 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 the Customer are breaching their rights or are illegal and following notice of such to the Customer, the Customer fails to provide adequate assurances to the contrary;
 - (c) ordered to do so by a competent Authority;
 - (d) the Service and/or Customer Content poses a security risk to the Service of another Customer or any third party;

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

If the Service is suspended in part, the Customer:

- (a) remains responsible for any applicable fees and charges for any Service to which it 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;
- (b) will not be entitled to any service credits under the service level agreement found at <https://www.bmit.com.mt/cloud-support-service-levels/> for any period of suspension; and
- (c) will not have the Customer Content erased as long as there is not a specific order by a competent Authority or as specified elsewhere in this Agreement.

If the Agreement is terminated for whatever reason, the Customer remains responsible for all fees and charges that it has incurred through the date of suspension. Upon such termination, all Customer Content will be removed, erased and destroyed within thirty (30) calendar days after the said termination. The 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.

A4-10. **Modification of Services.** BMIT reserves the right to modify, change, or discontinue any aspect or part of the Services, as defined at <https://www.bmit.com.mt/bmit-cloud-terms/>, including the whole service, as well as any associated support terms and service levels, at any time, with thirty (30) days' notice being served to the Customer.

A4-11. **Subscription Support** – BMIT provides Support services in relation to Cloud Services as per the BMIT standard support definition found at <https://www.bmit.com.mt/cloud-support-service-levels/>

A4-12. Additional Customer Obligations.

- a) The Customer is required to establish and maintain processes as necessary to manage and resolve first line support for End Users of the Services provided. If after reasonable efforts the Customer is unable to diagnose or resolve the error(s), the Customer may contact BMIT for technical support as established in the preceding clause.
- b) The Customer may be required to perform problem determination and resolution activities such as performing network traces, capturing error messages, collecting configuration information, changing product configurations, installing new versions of software or new hardware components, or modifying processes. The Customer is also responsible for implementing any procedures necessary to safeguard the integrity and security of its IT Systems and data from unauthorised access and to reconstruct lost or altered files resulting from catastrophic failures.
- c) Data Backups. It is the Customers' responsibility to ensure that regular data backups of the Customer Content are performed. The Customer shall either perform such backups directly or contract BMIT separately to perform such backups on its behalf as a Managed Service.

A4-13. Access to Customer's Cloud Environment. In order to properly respond to the Cloud support request BMIT may need to access the Customer's Cloud environment to collect the necessary logs or validate settings. BMIT will also use data generated in connection with the Customer's uses of the Cloud Service.

To the extent where BMIT does not have access to the Customer's Cloud environment, the Customer may need to upload or otherwise provide BMIT with pertinent information (such as log files, screenshots and core dumps, etc) as may be requested by BMIT Support Personnel. Failure to provide this information may result in the support request not being further entertained.

The Customer is solely responsible for taking all necessary steps to protect any sensitive or confidential information including passwords, cryptographic keys or personal data. Those steps may include obfuscating or removing such information or otherwise working with BMIT at the time of submission to limit the disclosure of such information.

BMIT may, at its own discretion, request the Customer to grant Support Personnel with privileged access to one or more of the IT Systems to fulfil customer request. Should the Customer, for any reason, refuse to grant such access rights to Service Provider's Support Personnel, then the Service Provider can refuse to intervene on such specific IT System, without cause or liability.

ANNEX A4A – TERMS & CONDITIONS REGARDING THE USE OF MICROSOFT SOFTWARE

This annex 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. 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.

A4a-1. ADDITIONAL DEFINITIONS.

- i. **“Client Software”** means software that allows a Device to access or utilize the services or functionality provided by the Server Software.
- ii. **“Device”** means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” server or other electronic device.
- iii. **“Server Software”** means software that provides services or functionality on a computer acting as a server.
- iv. **“Software Documentation”** means any end user document included with server software.
- v. **“Redistribution Software”** means the software described in Paragraph A4a-7 (“Use of Redistribution Software”) below.

A4a-2. **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.

A4a-3. **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.

A4a-4. **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.

A4a-5. **Ownership of Licensed Products.** The Licensed Products are licensed to BMIT Ltd. from an affiliate of 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.

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- A4a-6. **Use of Client Software.** You may use the Client Software installed on your Devices by BMIT Ltd. only in accordance with the instructions, and only in connection with the services, provided to you by BMIT Ltd. 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.
- A4a-7. **Use of Redistribution Software.** In connection with the services provided to you by BMIT Ltd., 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 BMIT LTD., WHICH TERMS MUST BE PROVIDED TO YOU BY BMIT LTD. 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 BMIT Ltd.
- A4a-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 BMIT Ltd.; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph A4a-7 (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 BMIT Ltd., upon notice from BMIT Ltd. 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.
- A4a-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.
- A4a-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 BMIT Ltd.
- A4a-11. **Termination.** Without prejudice to any other rights, BMIT Ltd. 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 BMIT Ltd. or BMIT Ltd.'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.
- A4a-12. **No Warranties, Liabilities or Remedies by Microsoft.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY BMIT LTD. AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.
- A4a-13. **Product Support.** Any support for the Licensed Products is provided to you by BMIT Ltd. and is not provided by Microsoft, its affiliates or subsidiaries.
- A4a-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.

- A4a-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 <https://www.bmit.com.mt/microsoft-software-legal-terms/>.
- A4a-16. **Liability for Breach.** In addition to any liability you may have to BMIT Ltd., you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
- A4a-17. **Microsoft Services Provider Use Rights.** You may find the MICROSOFT SERVICES PROVIDER USE RIGHTS ("SPUR") under <https://www.bmit.com.mt/microsoft-software-legal-terms/>.

ANNEX A4B – 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.

A4b-1. Additional Definitions.

- i. Any reference in this agreement to "**day**" will mean a calendar day.
- ii. "**Acceptable Usage Policy**" is set forth in the Online Services Terms.
- iii. "**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.
- iv. "**Consumption Offering**", "**Commitment Offering**", or "**Limited Offering**" describe categories of Subscription offers and are defined in clause A4b-10.
- v. "**Customer Data**" is defined in the Online Services Terms. "**Customer Solution**" is defined in the Online Services Terms.
- vi. "**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.
- vii. "**Non-Microsoft Product**" is defined in the Online Services Terms.
- viii. "**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.
- ix. "**Online Services Terms**" means the terms that apply to your use of the Products available at <https://www.bmit.com.mt/microsoft-software-legal-terms/>. The Online Services Terms found at <https://www.bmit.com.mt/microsoft-software-legal-terms/> include terms governing your use of Products that are in addition to the terms in this agreement.
- x. "**Previews**" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.
- xi. "**Product**" means any Online Service (including any Software).
- xii. "**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.
- xiii. "**SLA**" means the commitments we make regarding delivery and/or performance of an Online Service, see <https://www.bmit.com.mt/microsoft-software-legal-terms/>
- xiv. "**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.

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- xv. **"Subscription"** means an enrollment for Online Services for a defined Term as established by your Reseller.
- xvi. **"Term"** means the duration of a Subscription (e.g. 30 days or 12 months).
- A4b-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.
- A4b-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.
- A4b-4. **Acceptable use.** You may use the Product only in accordance with this agreement and the BMIT Acceptable usage 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.
- A4b-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 Usage Policy.
- A4b-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.
- A4b-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.
- A4b-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);
 - ii. For government offers; and
 - iii. For non-profit offers.

The requirements are listed at <https://www.bmit.com.mt/microsoft-software-legal-terms/>

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.

A4b-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."

A4b-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 <https://www.bmit.com.mt/>. 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.

A4b-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.

A4b-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.

A4b-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.

A4b-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.

A4b-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.

A4b-16. **Suspension.** Microsoft or BMIT Limited may suspend your use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section A4b-6 or A4b-19 within a reasonable time; or (3) you do not abide by the Acceptable Usage Policy or you violate other terms of this agreement.

If one or more of these conditions occurs, then:

- i. For Limited Offerings, your use of the Online Services may be suspended or your Subscription and your account immediately terminated without notice.
- ii. 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.

A4b-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 Online Services Terms. 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 A4b-17.

A4b-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.

A4b-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 (1) 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 (2) arises from violation of the Acceptable Usage 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.

A4b-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.

A4b-21. **Obligations.** Each party must notify the other promptly of a claim under Section A4b-19. 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 agreement are

in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

A4b-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.

A4b-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.

A4b-24. **Exceptions to Limitations.** The limits of liability in this agreement apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section A4b-19; or (2) violation of the other's intellectual property rights.

A4b-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 fulfilment 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.

A4b-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.

A4b-27. **Support.** First Level Support services for Products purchased under this agreement will be provided by BMIT Limited.

A4b-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.

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- 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 A4b-1, A4b-2.e, A4b-5, A4b-6, A4b-7, A4b-10 and A4b-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 <https://www.bmit.com.mt/microsoft-software-legal-terms/>.
 - 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.