



ANNEX A4 – PUBLIC CLOUD COMPUTING SERVICES TERMS & CONDITIONS

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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, Annex A4b, Annex A4c and Annex A4d) 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 Annex A4a found at <https://www.bmit.com.mt/microsoft-software-use-terms/>
- 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.

- A4-14. **Use of Microsoft Software and Online Services.** The use of Microsoft software is governed by Annex A4a, a set of Terms and Conditions found at <https://www.bmit.com.mt/microsoft-software-use-terms/>

The use of Microsoft online services is governed by Annex A4b, a set of Terms and Conditions found at <https://www.bmit.com.mt/microsoft-online-services-use-terms/>