

# Terms and Conditions for the Brüel & Kjær Measurement Partner Cloud Service

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## 1 Applicable Terms

- 1.1 The Measurement Partner Cloud Service is subject to these terms and conditions ("Service Terms") and the Brüel & Kjær Standard Terms and Conditions for Sale and Supply and End User License Agreement for Brüel & Kjær Software (EULA) ("Standard Terms") which are available at <http://www.bksv.com/AboutUs/LegalNotices.aspx>
- 1.2 In the event of inconsistency these Service Terms shall take precedence over the Standard Terms.
- 1.3 By accepting the Service Terms, User accepts that the Service Terms and the Standard Terms are applicable for the Service and shall take precedence over any User terms and conditions.
- 1.4 Supplier's acceptance of User's order or a request for free service is subject to export control checks and final credit approval.

## 2 Definitions

- 2.1 "Data" means the User's data collected through the Service.
- 2.2 "Service" means the Measurement Partner Cloud Service.
- 2.3 "Software" means any Supplier or third party software used in the provision of the Service.
- 2.4 "Start Date" shall mean the date of Supplier's approval of User Registration.
- 2.5 "Supplier" means Brüel & Kjær Sound & Vibration Measurement A/S or any of its affiliates as named on an order confirmation or invoice or other document.

## 3 Service Term

- 3.1 The Service shall be valid from Start Date until the Service is terminated by Supplier, as notified by Supplier to User's registered email address.

## 4 Ownership of Data

- 4.1 User shall at all times have full ownership of the collected Data, which shall be stored in the Service for the Service Term plus one month. Supplier shall be entitled to remove User Data from the Service should User not pay Services fees for three months.

## 5 Licence Terms and Intellectual Property

- 5.1 User's use of the Service and the Software shall, at all times, be consistent with the EULA or any software license terms which apply to the Service.
- 5.2 Supplier shall at all times have and retain title and full ownership of Software supplied and used by the Supplier for the provision of the Services.
- 5.3 All intellectual property rights in the Service and the Software supplied shall remain vested absolutely in Supplier; nothing in the Service shall have the effect of granting or transferring to, or vesting in, User any intellectual property rights in or to the Service or any supplied Software.
- 5.4 Nothing herein shall be deemed to limit any rights of Supplier under copyright, patent or other law.

## 6 Deliverables

- 6.1 Supplier shall provide the following as part of the Service:
  - 6.1.1 Provision of Data via the Service;
  - 6.1.2 Access to the Measurement Partner Cloud using the User registered email address, through the Internet;
  - 6.1.3 Storage and protection of the Data for the Term of the Service and one (1) month after the termination of the Service;
  - 6.1.4 Restoration of the Data in the event of a system failure;
  - 6.1.5 Help Desk facility available during Supplier local office hours for questions about the Service.

## 7 Specific Exceptions

- 7.1 Supplier's service and warranty obligations are solely those expressly described in these Service Terms. Supplier will not cover damages or be liable for loss or damages arising from:
  - 7.1.1 User's use or application of the Data;
  - 7.1.2 Defects caused by User's or third party hardware, software, operating system, modem, etc.;
  - 7.1.3 Remedial action resulting from an error in User's installation or resulting from User not having complied with Supplier's documentation material, manuals or other written or oral instructions and directions;
  - 7.1.4 Recovery of data or other support due to any defects caused by User's or third party hardware, software, operating system, modem, etc.;
  - 7.1.5 Main power supply failures and telecom network communications failures.
- 7.2 In no event shall Supplier be liable for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind.

## 8 User Responsibilities

- 8.1 User shall:
  - 8.1.1 Be responsible for appropriate backup and storage of the Data from the Service into a User storage media within one (1) month of the termination of the Service;
  - 8.1.2 Permit only personnel authorized by User to access the Service and shall ensure that the Service is used in accordance with Supplier's operating instructions and these Service Terms.

## 9 Confidentiality

- 9.1 Supplier will treat the Data as confidential and will only use the Data for the purpose of diagnosis and rectification of problems under the scope of the Service.
- 9.2 Supplier will not transfer or disclose any of the Data to any other party without the prior written consent of User.

## 10 Termination

- 10.1 Supplier can at any time with 30 days written notice to User's registered email address terminate the Service.
- 10.2 Supplier can without notice terminate the Service:
  - 10.2.1 if User fails to make any payment when due to Supplier under these Service Terms or any other contract with Supplier,
  - 10.2.2 if any act or omission of User delays Supplier's performance,
  - 10.2.3 if User violates any of these Service Terms,
  - 10.2.4 if User's credit becomes impaired; or User suspends its payments, makes any composition or arrangement with its creditors enters into bankruptcy proceedings or undergoes any analogous act or proceedings under an applicable foreign law;
  - 10.2.5 if the export control classification or status of the Data or the User has changed.
- 10.3 Termination under clause 10.2 will not entitle User to any credit for the remaining period.

## 11 Terms of Payment

- 11.1 This Service is free for initial usage. When storage usage exceeds free allowance, further Data storage is paid yearly in advance.
- 11.2 Unless otherwise stated in Supplier's invoice, terms of payment shall be net thirty (30) days from date of invoice.
- 11.3 If User fails to pay any payment due hereunder when due, Supplier may suspend or cancel further the provision of the Service and claim damages and/or receive reasonable cancellation fees.