



## Form3 Staging API – IBM Cloud Marketplace Terms of Use and License

These terms of use and license (the "**Terms**") govern your access to and use of the Form3 component (the "**Component**", as defined below) that Form3 makes available through the IBM Cloud® catalog (the "**Marketplace**") to enable you to discover Form3 and connect to the Form3 Staging API. By accepting these Terms (including when prompted to do so before deploying the Component through the Marketplace), or by deploying, installing, provisioning, accessing or using the Component, you ("**you**" or the "**Customer**") agree to be bound by these Terms. If you do not agree to these Terms, you must not accept them and must not deploy, install, access or use the Component.

These Terms are entered into between you and Form3 US Inc., a corporation incorporated in the State of Delaware, whose principal place of business is at 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808 – 1674 ("**Form3**", "**we**" or "**us**").

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms, the following definitions apply:

"**Component**" means the Terraform configuration and associated code, scripts and documentation supplied by Form3 and made available by Form3 through the Marketplace as a Deployable Architecture which, when deployed via IBM's catalog automation, runs against the Customer's own IBM Cloud account to provision and configure cloud infrastructure (including an IBM Cloud virtual server instance) and to install and configure software, in each case in order to forward requests to the Staging API, but excluding the Third-Party Components and the Staging API;

"**Credentials**" means the access credentials issued by Form3 to the Customer that are required to access the Staging API;

"**Deployable Architecture**" means a deployable architecture made available through the Marketplace, being IBM Cloud catalog automation that provisions and configures one or more cloud resources, as that term is used in the IBM Cloud catalog;

"**Documentation**" means any user or technical documentation that Form3 makes available in respect of the Component;

"**Intellectual Property Rights**" means patents, utility models, rights to inventions, copyrights and related rights, trademarks, trade names, domain names, rights in get-up, goodwill, rights in designs, database rights, rights to use and protect confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"**Staging API**" means the Form3 Staging API, being a non-production testing and

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evaluation environment made available by Form3, which does not perform live transaction or payment processing; and

**"Third-Party Components"** means the third-party software, images and packages that are provisioned, installed or otherwise made available when the Component is deployed, which are obtained from IBM's image registry and/or package mirror (or other third-party sources) and are not packaged, supplied or controlled by Form3, including operating system software (such as Ubuntu) and web server and other package software (such as nginx). The specific components, their versions and their applicable licenses are determined at the time of deployment and may change.

- 1.2. Section headings do not affect the interpretation of these Terms.
- 1.3. A reference to writing or written includes email.
- 1.4. Any words following the terms including, include, in particular, for example or any similar expression are illustrative and do not limit the words preceding those terms.

## 2. PURPOSE AND SCOPE

- 2.1. The Component is provided to enable the Customer to discover Form3 and to connect to the Staging API.
- 2.2. The Component does not itself provide access to the Staging API. To use the Staging API the Customer will need to request access to the Staging API from Form3. Access to the Staging API is not granted by these Terms. It requires the Customer to complete Form3's separate onboarding and credentialing process and to enter into a separate agreement with Form3, under which Form3 provides, and charges for, access to the Staging API. Valid Credentials must be obtained directly from Form3. The Component itself is provided free of charge.
- 2.3. The Staging API is a testing and evaluation environment only. It does not provide, and must not be used for, production use or live transaction or payment processing.
- 2.4. The Component is a Deployable Architecture. When the Customer deploys it through the Marketplace, IBM's catalog automation runs the Component's Terraform configuration against the Customer's own IBM Cloud account to provision and configure the relevant resources. The Customer is required to accept these Terms before deploying the Component.
- 2.5. If the Customer accepts these Terms or deploys, accesses or uses the Component on behalf of an entity, the individual doing so represents and warrants that they have authority to bind that entity to these Terms, and references to the Customer are to that entity. If that individual does not have such authority, they accept these Terms in their personal capacity and are personally responsible for the obligations under them.

## 3. LICENSE GRANT

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- 3.1. Subject to the Customer's compliance with these Terms, Form3 grants to the Customer a non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free license to deploy, install and use the Component (excluding the Third-Party Components, which are licensed under clause 4) solely for the Customer's internal evaluation and testing of the Staging API during the term of these Terms.
- 3.2. The Component is proprietary to Form3 and its licensors and is licensed to the Customer only under, and subject to, the limited license set out in clause 3.1. Any source code or other form of the Component made available to the Customer is provided solely for use in accordance with these Terms and remains the proprietary and confidential information of Form3 or its licensors.
- 3.3. Except as expressly set out in these Terms, no right or license is granted to the Customer in respect of the Staging API, the Credentials or any other Form3 product, service or Intellectual Property Rights.

## 4. THIRD-PARTY COMPONENTS

- 4.1. When deployed, the Component provisions, installs or otherwise makes available third-party software, images and packages (the Third-Party Components). The Third-Party Components are licensed to the Customer under their respective third-party licenses, and not under clause 3.
- 4.2. The Customer's use of each Third-Party Component is governed solely by the applicable third-party license for that component. The Customer is responsible for reviewing and complying with each such license.
- 4.3. To the maximum extent permitted by law, Form3 gives no warranty, makes no representation and accepts no liability in respect of the Third-Party Components, which are provided by their respective licensors on the terms of the applicable third-party licenses.
- 4.4. The Customer acknowledges that Form3 does not package, supply, select, fix or control the Third-Party Components, their versions or their applicable licenses. The Third-Party Components are provisioned and installed from IBM's image registry and package mirror (and other third-party sources) at the time of deployment, may change over time, and are made available to the Customer by their respective licensors and/or by IBM. The licenses that apply are those accompanying the Third-Party Components actually provisioned to the Customer. The Customer is responsible for identifying, reviewing and complying with those licenses.



## 5. CUSTOMER OBLIGATIONS AND RESTRICTIONS

### 5.1. The Customer shall:

- (a) use the Component and (where applicable) the Staging API only in accordance with these Terms, the Documentation and all applicable laws;
- (b) be responsible for all activity undertaken using the Component; and
- (c) comply with IBM's Cloud Services Acceptable Use Policy or any other applicable IBM policies as they apply to the Customer's use of the Marketplace and IBM Cloud.

### 5.2. The Customer shall not, and shall not permit any third party to:

- (a) use the Component or the Staging API for production purposes, for live transaction or payment processing, or to submit, upload, process or store any production or live personal data, personally identifiable information (PII), or any confidential, sensitive or proprietary information (whether of the Customer or any third party);
- (b) except as permitted by the applicable third-party licenses or by applicable law, copy, modify, reverse engineer, decompile or disassemble any part of the Component or the Staging API;
- (c) access, store, distribute or transmit any material that is unlawful, harmful or malicious, or that infringes the rights of Form3 or any third party, in the course of using the Component or the Staging API;
- (d) use the Component or the Staging API in any way that interferes with or disrupts the integrity or performance of the Component, the Staging API or any underlying infrastructure; or
- (e) use the Component or the Staging API other than as expressly permitted under these Terms.

## 6. PROPRIETARY RIGHTS

- 6.1. The Customer acknowledges that all Intellectual Property Rights in and to the Component (excluding the Third-Party Components), the Staging API, the Documentation and any related Form3 materials are and shall remain the exclusive property of Form3 or its licensors.
- 6.2. Nothing in these Terms transfers to the Customer any Intellectual Property Rights in the Component, the Staging API or the Documentation, save for the limited license expressly granted under clause 3.
- 6.3. Intellectual Property Rights in the Third-Party Components remain with their respective owners.

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## 7. WARRANTIES AND DISCLAIMER

- 7.1. The Component and the Staging API are provided on an "as is" and "as available" basis, for evaluation and testing only.
- 7.2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, FORM3 EXCLUDES AND DISCLAIMS ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND TERMS, WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
- 7.3. Form3 does not warrant that the Component or the Staging API will be uninterrupted, error-free or available at any particular time, or that they will meet the Customer's requirements.

## 8. LIABILITY AND INDEMNIFICATION

- 8.1. Nothing in these Terms limits or excludes either party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, or for any other liability that cannot be limited or excluded by applicable law.
- 8.2. Subject to clause 8.1, Form3 shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any:
  - (a) loss of profits, revenue, business, anticipated savings, goodwill or reputation;
  - (b) loss or corruption of data; or
  - (c) indirect, special, incidental, consequential, exemplary or punitive loss or damage;
  - (d) the principal amount or value of any payment, transaction, instruction or transfer, and any ex gratia, goodwill, refund or compensatory payment made by the Customer to any third party, the Customer acknowledging that the Staging API must not be used for live transaction or payment processing; or
  - (e) any fines, penalties or sanctions, and any losses arising from fraud or from any unauthorized transaction, access, processing or use of the Component or the Staging API,  
in each case arising out of or in connection with these Terms, the Component, the Third-Party Components or the Staging API.
- 8.3. Subject to clause 8.1, Form3's total aggregate liability arising out of or in connection with these Terms, the Component, the Third-Party Components and the Staging API, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed one hundred U.S. dollars (US\$100).

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- 8.4. The Customer acknowledges that the Staging API is a non-production environment and that it must not rely on it for any operational, commercial or production purpose.
- 8.5. The Customer shall indemnify and hold harmless Form3 from and against any losses, damages, liabilities, costs and expenses (including reasonable legal fees) arising out of any third-party claim (including any claim by a regulator) resulting from:
  - (a) the Customer's use of the Component or the Staging API in breach of these Terms (including clause 5 (Customer Obligations and Restrictions));
  - (b) any data or content the Customer submits to, or processes using, the Component or the Staging API; or
  - (c) the Customer's failure to comply with any third-party license applicable to the Third-Party Components, or with any applicable law.

## 9. THIRD-PARTY PLATFORMS

- 9.1. The Component is made available through the Marketplace, which is operated by IBM and/or its affiliates. The Customer's use of the Marketplace and of IBM Cloud is subject to the separate terms applicable between the Customer and IBM.
- 9.2. Form3 is not responsible or liable for the Marketplace, IBM Cloud, the IBM image registry, or any product or service provided by IBM, Canonical or any other third party, and gives no warranty in respect of any of them.
- 9.3. These Terms do not override, and are subordinate to, any agreement between the Customer and IBM governing the Customer's use of the Marketplace and IBM Cloud. To the extent of any conflict between these Terms and that IBM agreement in respect of the Marketplace or IBM Cloud, the IBM agreement prevails. Any billing, payment and tax terms applicable to the Customer's acquisition of the Component through the Marketplace are governed by IBM's terms and not by these Terms.
- 9.4. The Component is deployed into, and runs within, the Customer's own IBM Cloud account. The Customer is responsible for its IBM Cloud account and for all charges imposed by IBM in connection with the deployment and operation of the Component, including compute and other infrastructure charges for the IBM Cloud virtual server instance. IBM makes estimated costs available to the Customer before deployment.
- 9.5. The Customer is solely responsible for its own IBM Cloud account and environment and for the resources provisioned by the Component within it, including their configuration, security, operation, monitoring and decommissioning, and for any charges incurred while those resources remain in place. Form3 is not responsible for the Customer's IBM Cloud account or environment, or for any resources that the Customer does not remove or decommission.



## 10. DATA, HOSTING AND PRIVACY

- 10.1. The Component is deployed within, and runs in, the Customer's own IBM Cloud account and in the region selected by the Customer. The Staging API is hosted by Form3 in the United States.
- 10.2. Deploying and running the Component does not itself cause any additional Customer data to be transmitted to, or logged by, Form3. If the Customer calls the Staging API, Form3 logs that API usage in the same way as if the Customer had called the Staging API directly.
- 10.3. Form3's website privacy statement (available at [Privacy Statement](#)) applies to your use of Form3's website. The Component is not designed to process personal data, and any processing of personal data in connection with access to the Staging API is dealt with under the separate access agreement referred to in clause 2.2.
- 10.4. The Staging API is a non-production environment and the Customer must not submit to it any production or live personal data, personally identifiable information (PII), or any confidential, sensitive or proprietary information (whether of the Customer or any third party); the Customer may use test data only.

## 11. SUPPORT

- 11.1. Support for the Component and the Staging API is provided by Form3 and not by IBM. The Customer may contact Form3 for support at [support@form3.tech](mailto:support@form3.tech). Form3 gives no commitment as to availability, service levels or response times in respect of the Component or the Staging API, which are provided for evaluation and testing only.

## 12. CONFIDENTIALITY

- 12.1. "Confidential Information" means any non-public information disclosed or made available by Form3 to the Customer in connection with these Terms, the Component or the Staging API, including the Staging API and any non-public environment to which the Customer is given access, the Credentials, the Documentation, and any non-public technical or business information, in each case whether or not marked as confidential.
- 12.2. The Customer shall keep Form3's Confidential Information confidential, use it solely to deploy and use the Component and evaluate the Staging API in accordance with these Terms, and not disclose it to any third party without Form3's prior written consent, save to those of its personnel who need to know it for that purpose and who are bound by confidentiality obligations no less protective than these.

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- 12.3. The obligations in this clause do not apply to information that is or becomes public other than through the Customer's breach, was lawfully known to the Customer without restriction before disclosure, is lawfully received from a third party without restriction, or is independently developed by the Customer without use of Form3's Confidential Information.
- 12.4. The Customer may disclose Form3's Confidential Information to the extent required by law or by a regulator or court of competent jurisdiction, provided that (where lawful and practicable) it gives Form3 prompt prior notice.
- 12.5. On termination of these Terms, or on Form3's request, the Customer shall cease using and shall return or destroy Form3's Confidential Information. This clause survives termination.

## 13. EXPORT CONTROL AND SANCTIONS

- 13.1. The Customer shall comply with all applicable export control, economic sanctions and trade laws and regulations, including those of the United States, the United Kingdom and the European Union.
- 13.2. The Customer represents and warrants that it is not located in, organized under the laws of, or ordinarily resident in any country or territory subject to comprehensive U.S. sanctions, and that it is not identified on any U.S. Government or other applicable restricted or denied party list.
- 13.3. The Customer shall not access, use or export the Component or the Staging API in violation of any such laws or regulations.

## 14. U.S. GOVERNMENT END USERS

- 14.1. The Component and the Staging API are commercial computer software developed exclusively at private expense. If acquired by or on behalf of any agency or instrumentality of the U.S. Government, they are provided as commercial items, and the U.S. Government acquires only those rights set out in these Terms in accordance with FAR 12.212 and DFARS 227.7202, as applicable.

## 15. TERM AND TERMINATION

- 15.1. These Terms take effect when the Customer first accepts these Terms or first deploys, installs, accesses or uses the Component (whichever is earlier) and continue until terminated in accordance with this clause 15.
- 15.2. Either party may terminate these Terms at any time on thirty (30) days' written notice, or immediately if the other party materially breaches these Terms and (where

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the breach is capable of remedy) fails to remedy it within fourteen (14) days of being notified to do so.

- 15.3. Form3 may suspend or terminate the Customer's access to the Component and/or the Staging API immediately if the Customer breaches clause 5.
- 15.4. Form3 may suspend, restrict or terminate the Customer's access to the Component and/or the Staging API immediately and without liability where:
  - (a) Form3 reasonably suspects a security risk, vulnerability, unauthorized access, or misuse of a threat to the Component, the Staging API or Form3's systems or data;
  - (b) the Customer is in breach of these Terms;
  - (c) Form3 is required to do so by applicable law, by a regulator or by IBM; or
  - (d) Form3 considers it reasonably necessary to protect the Component, the Staging API, Form3, its other customers or any third party.
- 15.5. Form3 will, where practicable, notify the Customer of any such suspension or restriction.
- 15.6. Notwithstanding any other provision of this clause, Form3 may at any time and in its sole discretion modify, suspend, discontinue or withdraw the Component and/or the Staging API (or the Marketplace listing), in whole or in part, and may terminate these Terms for convenience, in each case with or without notice and without liability to the Customer, the Component and the Staging API being provided free of charge for evaluation and testing only.
- 15.7. On termination of these Terms, the license granted under clause 3 ends and the Customer shall cease all use of the Component and the Staging API and delete or uninstall the Component, save that the Customer's continued use of any Third-Party Component remains governed by the applicable third-party license.
- 15.8. Clauses 6, 7, 8, 9, 10, 12, 13, 14 and 16, and any other provision intended to survive, continue in force after termination.

## 16. GENERAL

- 16.1. Entire agreement: These Terms (including the licenses referred to in them) constitute the entire agreement between the parties in relation to their subject matter and supersede all prior arrangements relating to it.
- 16.2. Assignment: The Customer may not assign or transfer any of its rights or obligations under these Terms without Form3's prior written consent. Form3 may assign or transfer its rights and obligations under these Terms.

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- 16.3. Variation: Form3 may amend these Terms from time to time by making the amended Terms available through the Marketplace. The Customer's continued use of the Component after such amendment constitutes acceptance of the amended Terms.
- 16.4. Waiver: No failure or delay by a party to exercise any right or remedy is a waiver of that or any other right or remedy.
- 16.5. Severance: If any provision of these Terms is held to be invalid or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid and enforceable, or, if it cannot be so modified, deleted, and the remaining provisions shall continue in full force.
- 16.6. No partnership: Nothing in these Terms creates any partnership, joint venture or agency between the parties.
- 16.7. No third-party beneficiaries: These Terms are for the sole benefit of the parties and their permitted successors and assigns, and nothing in these Terms, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 16.8. Notices: Notices under these Terms must be given in writing to [legal@form3.tech](mailto:legal@form3.tech) in the case of Form3, and to the contact details provided by the Customer on provisioning the Component.
- 16.9. Governing law: These Terms and any dispute or claim arising out of or in connection with them or their subject matter (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the State of New York, United States of America, without regard to its conflict of laws principles.
- 16.10. Jurisdiction: The state and federal courts located in New York County, New York shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or their subject matter. Each party irrevocably submits to the jurisdiction of those courts and irrevocably waives any right to a trial by jury in any proceeding arising out of or relating to these Terms.