



**BLUELOOP LIMITED  
TERMS & CONDITIONS FOR CUSTOMERS**

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The following terms and conditions apply to all transactions with Blueloop Limited and shall become binding once an order is accepted by Blueloop Limited. The placing of an order for goods or services indicates your acceptance of these terms and conditions. Please read them carefully.

**SECTION A: GENERAL CONDITIONS**

This section applies to all services and products which Blueloop Limited supplies.

**1. Interpretations**

In these Terms and Conditions:-

Expression	Meaning
"Company"	Blueloop Limited (Company number 3981322) Registered Address: Blueloop House, Ilchester Road, Yeovil, Somerset, BA21 3AA
"Consequential Loss"	Without limitation pure economic loss, loss of profit, revenue, loss of business and/or depletion of goodwill or anticipated savings and any other indirect losses including costs of defending proceedings or claims
"Consultancy Services"	Specialist IT advisory and reporting work which the Company may undertake for the Customer from time to time in such bespoke terms as agreed between the parties
"Customer"	The person, company or other body purchasing the Hardware or Software or Services from the Company pursuant to the Order
"Hardware"	The IT and/or computer hardware to be supplied to the Customer by the Company
"Intellectual Property Rights"	Rights of any nature whatsoever, whether registered or unregistered including, without limitation, any patent, right in a design, copyright, trade mark, database right and other intellectual property right whether or not capable of registration
"Maintenance"	The support and maintenance service(s) to be provided to the Customer by the Company
"Order"	A contract or series of contracts for the supply of Products or Services to

"Products"	Any Hardware or Software or other goods sold by the Company to the Customer
"Quotation"	The letter or written statement provided by the Company to the Customer summarising the specific details of the Products to be supplied together with their price(s)
"Services"	The services to be supplied by the Company to the Customer pursuant to the Order, which may include without limitation delivery, installation, implementation, Maintenance and Consultancy Services
"Software"	The pre-packaged software or electronic licence to be supplied to the Customer by the Company pursuant to the Order
"Services Proposal"	The letter or written statement provided by the Company to the Customer summarising any specific terms of, or scope and price of the Services to be provided
"Terms and Conditions"	These terms and conditions and any Order for the supply of Services or Products made between the Customer and the Company
"Third Party"	Any person, company or other body not being the Company or the Customer
"Working Day"	Monday to Friday excluding public holidays in England and Wales
"Onsite Working Hours"	The hours of 9.00am. to 5.00pm. during a Working Day
"Office Working Hours"	The hours of 8.00am. to 6.00pm. during a Working Day

**2. General**

2.1 These Terms and Conditions shall apply to all tenders, offers, quotations, acceptances, agreements and deliveries relating to the supply of Products or Maintenance or Services by the Company.

2.2 All descriptions, specifications, photographs, weights, dimensions, capacities, prices, performance ratings and other information quoted (whether online or in hard copy format) in the Company portfolio or included in any sales literature, quotation, price list, acknowledgement of order, invoice or other document are to be deemed approximate only (except where stated in writing to be exact) and shall not form part of the contract or Order or Services Proposal other than as approximations).

2.3 Any typographical, clerical or other error or omission in any sales literature, Company portfolio, quotation, price list, acknowledgement of order, invoice or other document (whether hard copy or online) or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.4 The Company reserves the right to make any changes in the specifications of Products which are required to conform with



any applicable safety or other legal requirements or which do not materially affect their quality or performance.

2.5 The Company's policy is to supply the Services and the Products only to business customers (i.e. those who are not private consumers). In accepting these Terms and Conditions, the Customer warrants that it is not purchasing the Products or Services as a private consumer.

### **3. Pricing and Payment**

3.1 The price payable by the Customer for the supply of Product(s) or Services shall be that agreed between the Customer and the Company each time the Customer places an Order and as specified in the Quotation or Services Proposal.

3.2 For the avoidance of doubt, these Terms and Conditions shall apply to any Orders placed by the Customer whether in writing or orally which shall become binding if accepted by the Company.

3.3 Unless an order has become binding on the Company all prices are subject to change without prior notice.

3.4 Unless otherwise agreed between the parties, invoices will be raised and dated by the Company on the date of delivery of the Products or on commencement of the Services. Where both Products and Services are supplied against the same Order, a separate invoice will be raised for each of those two elements.

3.5 The Customer shall pay each invoice in full, together with any VAT at the appropriate rate and other expenses, to the Company within 30 (thirty) days of the date of invoice ("due date"). The time of payment shall be of the essence.

3.6 If the Customer fails to pay any sums due by the due date or does not comply with an obligation imposed upon the Customer then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to withhold the supply of any Products or Services to be provided to the Customer by or on behalf of the Company until such payment is made.

3.7 The Company reserves the right to charge interest to the Customer on any sums, fees or other charges which are not paid on the due date and that interest may be charged from the date such payment falls due at the statutory rate of five per cent (5%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis.

3.8 The Company or its agent shall deliver the Products to any premises (whether in the United Kingdom or in any country) notified to the Company by the Customer and for the avoidance of doubt the Customer shall be liable for any costs incurred by the Company in relation to carriage, postage and packing and any other applicable taxes and duties.

3.9 The Customer shall not be entitled to make a set-off or counter-claim or claim a lien in respect of any amounts owed by the Company and shall pay all amounts due without making a deduction of any kind.

### **4. Customer's Obligations**

4.1 The Customer shall:-

4.1.1 take all reasonable precautions to protect the health and safety of the Company's personnel whilst at any location of the Customer;

4.1.2 allow the Company to exercise a right of entry over all premises in the possession of or under the control of the Customer in order for the Company to fulfil its obligations under these Terms and Conditions;

4.1.3 be responsible for ensuring that its premises are ready to receive the items concerned;

4.1.4 promptly furnish the Company with any information required by the Company in order to provide the Products or the Services and ensure its employees or agents co-operate with the Company;

4.1.5 in the event that the Customer fails for any reason to complete any purchase of any Products or Services within the period notified to the Customer at any time by the Company, the Customer shall indemnify the Company against any loss, damage or other cost of whatsoever nature suffered or incurred by the Company reasonably relating to that failure on the part of the Customer;

4.1.6 if a Service is delayed other than through the Company's fault, pay any sums required by the Company in respect of idle-time incurred for the delay, including delay as a result of the Customer's agents or sub-contractors. Any agreed time schedules shall be deferred to a reasonable period of time or no less than the period of the delay;

4.1.7 promptly provide the Company, on request, with all information and assistance that the Company may reasonably require.

4.2 The Customer acknowledges that it is relying solely upon its own skill and judgement and not that of the Company in determining the suitability of any Products and their fitness for any general or specific purpose. (This clause does not apply however in circumstances where the Company has provided Services to a Customer and the Company has been recommended a specific Product to the Customer in writing.)

4.3 The Customer warrants that any of its representatives who enter into these Terms and Conditions and any order with the Company have the Customer's authority to do so and that the Customer will take responsibility for any employee, ex-employee or other person who holds themselves out to be the authorised representative of the Customer.

### **5. Documentation**

5.1 Save where the Customer's software licence with the manufacturer of the Software it has purchased permits such copying, the Customer shall not copy or reproduce in any way the whole or a part of the user manual or any other documentation relating to any Products or Services which is supplied to the Customer without the Company's prior written consent.

### **6. Warranties**

6.1 The Company warrants it has the right to provide or procure the provision of the Products and Services.

### **7. General Exclusions and Limitations of Liability**

7.1 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into these Terms and Conditions or relating to the Products or the Services are excluded. Notwithstanding this, any Products supplied under these Terms and Conditions will conform substantively to any specifications given in relation to them and any Services or provided under these Terms and Conditions will be provided with reasonable skill and care.

7.2 The total liability which the Company shall owe to the Customer in respect of all claims under the Order shall not



exceed the purchase price paid by the Customer in respect of the Products or, in respect of any Services, the sum of £20,000.

7.3 No actions regardless of form arising out of these Terms and Conditions may be brought by the Customer more than two years after the Customer becomes aware or should reasonably have become aware of the facts constituting the cause of action.

7.4 Nothing in these Terms and Conditions shall limit the Company's liability to the Customer for liabilities which cannot be limited or excluded as a matter of law including:

7.4.1 death or personal injury resulting from the negligence of the Company, its employees, agents or sub-contractors; and

7.4.2 fraud or fraudulent misrepresentation.

## **8. Force Majeure**

8.1 Neither party shall be liable to the other party in any manner whatsoever for any failure or any delay or for the consequences of any delay in performing its obligations under these Terms and Conditions (save in respect of any obligation to pay money) due to any cause beyond the reasonable control of the party in question which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include:

8.1.1 governmental actions, war, riots, civil commotion, fire, flood, epidemic, plague, terrorist act, transport infrastructure disruption; or

8.1.2 labour disputes including labour disputes involving the work force or any part thereof of the party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions; and

8.1.3 acts of God.

## **9. Termination**

9.1 In the event of:

9.1.1 any distress, execution or other legal process being levied upon any of the Customer's assets;

9.1.2 the Customer entering into any arrangement or composition with its creditors, committing any act of bankruptcy or (being a corporation) an order being made or an effective resolution being passed for its winding up, except for the purposes of amalgamation or reconstruction as a solvent company, or a receiver, manager receiver, administrative receiver or administrator being appointed in respect of the whole or any part of its undertaking or assets;

9.1.3 the Customer ceasing or threatening to cease to carry on business;

9.1.4 any breach of these Terms and Conditions by the Customer;

9.1.5 the Customer breaching any of its obligations under this Agreement;

9.1.6 non payment by the Customer of any amount due from it to the Company; or

9.1.7 the Company reasonably apprehending that any of the events mentioned above is about to occur; the Company shall be entitled to terminate the Order and suspend all or any work on current or future deliveries and instalments of the Products or the provision of any Services and on written notice to the Customer shall be entitled to cancel the undelivered or unperformed portion of the Order between the Company and the Customer and deem that the whole of the price payable under the Order or any other agreement shall be payable immediately.

9.2 In the event of such termination the Company shall, for the avoidance of doubt, be entitled to recover as damages from the Customer all reasonable costs which the Company may sustain due to such termination.

9.3 In the event of such termination, should the Customer have failed to make payment in full for the Software, then the Customer shall immediately cease use of all Software (and any updates of same) and at its own expense, remove from all computers under its control all copies of the Software (and updates) and return or destroy them (certifying in writing to the Company that such destruction has taken place).

9.4 For a period of six months following termination of the Order, the Customer shall on not less than two days notice, from the Company, permit authorised representatives of the Company to enter its premises during normal business hours for the purposes of confirming that the Customer has complied with its post termination obligations.

9.5 The exercise of the rights conferred by this Clause 9 shall be without prejudice to any other right enjoyed by the Company pursuant to these Terms and Conditions or by law.

## **10. Severability**

10.1 If a provision in these Terms and Conditions is held by any competent authority to be invalid or wholly or partly unenforceable such invalidity or unenforceability shall not in any way affect the remainder of these Terms and Conditions.

## **11. Assignment**

11.1 The Customer will not be entitled to assign the benefit or delegate the burden of the Order without the prior written consent of the Company which it may in its absolute discretion refuse.

11.2 The Company will be entitled to assign the benefit or delegate the burden of the Order.

## **12. Sub-Contracting**

12.1 The Company shall be free to sub-contract any or all of its rights and obligations under these Terms and Conditions as it sees fit. The Customer will not be entitled to sub-contract all or any part of its obligations under these Terms and Conditions without the prior written consent of the Company. The Company will not withhold such consent unreasonably.

## **13. Confidentiality**

13.1 Each party agrees with the other in respect of all information of a confidential nature disclosed in the course of the supply of Products or Services (which includes without limitation, in the case of information to be kept confidential by the Customer, information as to the operation of the business of the Company and information relating to the Products and for the Company, any information about the Customer's business ("Confidential Information")):

13.1.1 to keep the Confidential Information in strict confidence and secrecy;

13.1.2 not to use the Confidential Information save for complying with its obligations under these Terms and Conditions;

13.1.3 not to disclose the Confidential Information to a Third Party; and

13.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees



and others who of necessity need it in the performance of their duties as envisaged by the Order and in those circumstances to ensure that those employees and others are aware of the confidential nature of the Confidential Information; provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under these Terms and Conditions) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be).

13.2 This obligation of confidentiality shall survive the termination of any Order.

#### **14. Non-Solicitation**

14.1 The Customer will not solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of the Company professionally or otherwise directly associated with the Company during the term of the Order or for 12 months thereafter.

14.2 For the avoidance of doubt, there is no restriction on the Customer employing any person who is employed or acting for the Company where that person responds to a bona fide public advertisement for employees.

#### **15. Amendment and Waiver**

15.1 No amendment of these Terms and Conditions shall be binding unless executed in writing and signed by an authorised representative of the Company and by an authorised representative of the Customer.

15.2 The failure of the Company at any time to enforce a provision of these Terms and Conditions shall not be deemed a waiver of such provision or of any other provision of these Terms and Conditions or of the Company's right thereafter to enforce any such provision(s).

#### **16. Notices**

16.1 Any demand, notice or other communication shall be in writing and may be served by hand, prepaid first class post or facsimile.

#### **17. Entire Agreement**

17.1 These Terms and Conditions (and any licence proffered by or on behalf of the owner of the Products and/or Software supersedes all previous written or other documents or agreements (written or oral) relating to the subject matter of these Terms and Conditions.

#### **18. Third Parties**

18.1 No Third Party may enforce any provision of these Terms and Conditions by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **19. Law and Jurisdiction**

19.1 The formation, construction, performance, validity and all aspects whatsoever of these Terms and Conditions shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.

### **SECTION B: SOFTWARE AND HARDWARE SALES**

#### **20. Warranties**

20.1 The Company does not give any warranties in relation to Products purchased by Customers.

20.2 The only warranties which the Customer receives are those which are given by the manufacturer or licensor (as the case may be) of such Hardware or Software to the Customer and are subject to any relevant limitations and exclusions imposed by such manufacturer or licensor (as the case may be).

20.3 The Company shall provide the Customer with details of such warranties and remedies for breach of such warranties (if applicable) upon request.

#### **21. Delivery**

21.1 The Company shall use its reasonable endeavours to deliver the Products to the premises stated by the Customer by any delivery date estimated by the Company and for the avoidance of doubt the Customer acknowledges that the delivery date is not guaranteed or of the essence of the Contract.

21.2 The Company shall in no circumstances be liable to the Customer for any losses, damages or charges incurred by the Customer due to the late delivery of the Products or Services.

21.3 Products delivered to the Customer shall be deemed accepted by the Customer and the Customer agrees it will inspect the Products immediately upon delivery and in all cases shall inform the Company in writing within 24 hours of delivery of any damage, shortages, defects or non-delivery of the Products.

21.4 If the Customer fails to take delivery of the Products (or fails to give the Company adequate delivery instructions at the time stated for delivery save for circumstances beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other rights or remedies available to it the Company may:-

21.4.1 store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

21.4.2 sell the Products at the best price readily available and charge the Customer any shortfall below the price obtained under the Order.

#### **22. Risk**

22.1 Risk of damage to or loss of the Products shall pass to the Customer:-

22.1.1 in the case of Products being collected by the Customer at the Company's premises then at the time when the Customer collects the Products from the Company's premises; or

22.1.2 in the case of Products which are being delivered to the Customer's premises, then at the time of delivery; or

22.1.3 where the Customer wrongfully fails to take delivery of the Products, at the time when the Company has tendered delivery of the Products to the Customer.

#### **23. Property/Title**

23.1 Notwithstanding delivery of the Products, title in the Products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full for the price of the Products and all other Products agreed to be sold by the Company to the Customer for which payment is then due.

23.2 Until such time as title in the Products pass to the Customer the Customer shall keep the Products separate from the Customer's other goods and those of any other third parties and



properly stored, protected and insured and identified as the Company's property.

23.3 Until such time as title in the Products passes to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Products to the Company and if the Customer fails to do so immediately the Customer shall allow the Company or its agents or representatives to enter upon the Customer's premises or any premises of any third party where the Products are stored and repossess the goods.

#### **24. Cancellation**

24.1 No order which has been accepted by the Company may be cancelled by the Customer unless written agreement is obtained from an authorised representative of the Company.

24.2 The Customer agrees it may be required to indemnify the Company in full for any costs, damages, losses, charges and expenses (including any loss or profit) incurred by the Company as a result of any cancellation which is permitted under clause 24.1.

#### **25. Returns Policy – Non-Faulty Products**

25.1 The Company normally allows Customers to return unopened Products, however all returns are at the Company's sole and absolute discretion.

25.2 Under no circumstances will the Company accept returns of opened Products unless those Products are faulty.

25.3 In circumstances where return of Product(s) is permitted by the Company the Company will issue a credit note on a Customer's account so that the invoice for the relevant Product is deemed cancelled. In the event a Customer has paid for goods in full, a refund will be granted.

#### **26. Returns Policy – Defective or Faulty Products**

26.1 The refund or replacement of faulty or defective Products is subject strictly to individual manufacturer's "Dead On Arrival" ("DOA") policies.

26.2 Individual manufacturer's DOA policies may be obtained by the Customer by contacting the Company's customer service department.

26.3 The Customer must notify the Company of a defect in the Products within the time limit provided for in the applicable manufacturer's DOA policy.

26.4 The Customer may be required to contact the manufacturer's technical department to troubleshoot and/or to obtain DOA authorisation which is to be retained by the Customer and presented to the Company upon request.

26.5 The Customer is also required to make a note of any call/case reference numbers issued by the manufacturer to assist the Company with return of the DOA product.

26.6 In the case where it is established that Products are faulty or defective the Company's customer service department will arrange with the Customer to have the Products collected. In some instances the manufacturer's warranties require the Customer to contact the repair agent directly. If this is the case, the Customer will be so informed by the Company's customer service department.

26.7 All parts and labour charges will be waived but the Customer is responsible for ensuring that the Products are returned to the Company in their original packaging together with all disks, manuals and cables so as to ensure safe transit and ease of identification. The external packaging must not be

damaged or defaced so it is recommended the goods are re-boxed for transport.

26.8 The Products will be tested on receipt. If no fault is found the Products shall be returned to the Customer at the Customer's cost.

26.9 If a fault is found and an applicable manufacturer's DOA period is exceeded, then the Products will be repaired and/or replaced under the terms of the manufacturer's warranty.

#### **27. IPRs/Licence issues in relation to Software**

27.1 The title to and the Intellectual Property Rights in the Software and in the media containing such Software does not pass to the Customer. The Customer is licensed to use such Software in accordance with these Terms and Conditions and in accordance with the applicable software licence agreement's terms, and by entering into the Terms and Conditions the Customer agrees to comply with such terms.

### **SECTION C: SERVICES: GENERAL**

#### **28. Services**

28.1 The following conditions shall apply to all Services provided by the Company to Customers.

28.2 The Company warrants and undertakes to the Customer that:

28.2.1 The Company's employees, agents and sub-contractors will have the necessary skill and expertise to provide the Services described in the Services Proposal in accordance with good industry practice;

28.2.2 The Company will provide independent and unbiased advice and will exercise reasonable skill and care in the provision of the Services.

28.2.3 The Services will be provided in a timely and professional manner.

28.3 Should the Customer become dissatisfied with the performance of any personnel assigned by the Company to perform the Services, the Customer shall notify the Company in writing with details of the unsatisfactory performance, and provided that the Company is satisfied that the Customer's dissatisfaction is reasonable, the Company shall replace that person as soon as reasonably practicable.

28.4 Where the Company agrees to provide Services, any estimate or indication by the Company as to the number of man days or man hours required by the Company to undertake a specific task shall be construed as being an estimate only.

28.5 The Company shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature (including without limitation Consequential Loss) suffered or incurred by the Customer where such estimate or indication is incorrect.

28.6 The charges agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which the Company shall charge its then current rates unless expressly stated within the Quote or Services Proposal.

28.7 The Company will normally carry out the Services during Onsite Working Hours but may, on reasonable notice, require the Customer to provide access to the Customer's premises at other times.

28.8 At the Customer's request the Company may agree to work outside Onsite Working Hours however this shall be subject to any reasonable additional charge that may be made by the



Company for complying with such request. Such charges shall be agreed in writing prior to commencement of any out of hours work.

28.9 All personnel required for the Services will be provided by the Company and will be facilitated wherever possible by use of the Customer's own staff, however the Company reserves the right to sub-contract the whole or any part of the Order to any person or company.

#### **SECTION D: SUPPORT AND MAINTENANCE SERVICES**

##### **29. Provision of Maintenance**

29.1 Where the Company agrees to provide support and/or maintenance services in respect of Products supplied to the Customer, this will generally comprise reasonable assistance in the resolution of queries via a telephone call originated by the Customer during Office Working Hours for the agreed period (limited to first line support only).

29.2 Where the Company agrees to provide Maintenance in respect of the Software this shall be provided in accordance with the Company's applicable Maintenance schedule as provided to the Customer by the Company.

29.3 Any additional Maintenance which the Company agrees to supply to the Customer in relation to the Software or Hardware shall be provided on a time and materials basis at the Company's then current rates for same unless otherwise agreed.

#### **SECTION E: INSTALLATION AND DELIVERY SERVICES**

##### **30. Installation & Delivery services**

30.1 Where the Company agrees to assist a Customer with the installation of Hardware and/or Software or delivery of it, the Customer shall at its own expense and prior to the delivery of the Hardware or Software (as applicable) comply with the Company's reasonable requests in order to allow the Company to provide the installation and/or delivery services.

30.2 Personnel provided by the Company will remain under the management and conditions of employment of the Company or its nominated sub-contractor.

30.3 The Customer must provide reasonable access and assistance to the Company's staff for the purpose of enabling the Company's staff or officers or agents or subcontractors to fulfil their duties.

#### **SECTION F: CONSULTANCY SERVICES**

##### **31. Quality of Consultancy Services & deliverables**

31.1 The terms of reference for the Consultancy Services to be performed by the Company shall be as specified in the Services Proposal. The Customer may from time to time wish to vary the terms of reference. Under these circumstances, the Company will use all reasonable endeavours to accommodate that variation. Any changes in the charges and/or timescales as a result of that variation shall be negotiated between the Customer and the Company.

31.2 In respect of Software Asset Management, consultancy work is performed on a best endeavours basis and The Company cannot guarantee the accuracy of any effective license position, solution and/or compliance report.

31.3 Where progress reports are to be provided in accordance with the Services Proposal, the Company shall render such reports at the time and in the manner specified or as otherwise agreed between the Company and the Customer.

31.4 The parties agree that all Intellectual Property Rights which existed prior to the date of the Order in relation to any items used in the performance of the Consultancy Services shall remain the property of the existing owner of those Intellectual Property Rights.

31.5 The Company shall own and be fully entitled to use in any way it deems fit any Intellectual Property or Intellectual Property skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing the Consultancy Services and any improvements made or developed during the course of the Consultancy Services. For the avoidance of any doubt, this shall include any improvements or modifications to Software during the duration of the Order. Nothing herein shall be construed or shall give effect to any transfer of right, title or interest in the Company's Intellectual Property Rights.

31.6 The Customer shall indemnify and keep the Company indemnified in respect of any losses, costs, damages, claims and/or expenses incurred by the Company due to any claims by any Third Party arising out of any use, access to or modification of the Customer's computer systems by the Company on the Customer's instructions and/or use of any materials supplied to the Company by the Customer. The indemnity in this clause 31.6 shall survive the termination or expiry of the Order.

#### **SECTION G: INTERNET & COMMUNICATION SERVICES**

##### **32. Provision of Internet & Communication Services**

32.1 The Company will provide the Services from the date notified to the Customer with the reasonable degree of skill and care of a competent Internet service provider ("ISP"). The Services do not include any equipment or services that we may supply to you under separate agreements. The company complies with the ITSPA Code of Practice – [www.itspa.org.uk](http://www.itspa.org.uk)

32.2 The Company shall be entitled to:

(A) change the codes and/or the numbers allocated to the Customer or the technical specification of a Service where necessary, for operational reasons, statutory or regulatory requirements, provided that any change to the technical specification does not materially affect the performance of the Service;

(B) suspend Services for operational reasons or in case of emergency or in accordance with clause 9: and

32.3 The Customer is responsible for the Hardware and must not add to, modify or in any way interfere with the Hardware, nor allow anyone else, other than someone authorised by the Company, to do so. The Customer will be liable to the Company for any loss of or damage to the Hardware, except where such loss or damage is due to fair wear and tear or is caused by the Company or anyone acting on its behalf.

32.4 Any equipment connected to or used in conjunction with the Services must be connected and used in accordance with any instructions and any safety or security procedures applicable to the use of that equipment.

32.5 Any equipment which is attached (directly or indirectly) to the Services must be technically compatible with the Services and approved for that purpose under any relevant legislation.

32.6 The Customer undertakes to use the Services in accordance with:

(A) such instructions and conditions as may be notified in writing to the Customer by the Company from time to time;



(B) the relevant provisions of the Telecommunications Act 1984 (the "Act") or any other legislation applicable to the Company; any direction of the Director General of Telecommunications or other competent authority and any licence granted there under which applies to the running of a telecommunications system by the Customer; and

(C) such terms and conditions of any licensed telecommunications operator providing the equipment or telephone line as the Company shall notify the Customer from time to time.

32.7 Without limitation to the generality of clause 32.6, the Customer undertakes not to use the Services:

(A) for the transmission of material which is defamatory, offensive or of an obscene or menacing character; or

(B) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright and confidentiality); or as a means of communication for purposes other than that for normal business or domestic use; or fraudulently or in connection with a criminal offence.

32.8 For the avoidance of doubt, the Customer acknowledges that it has sole responsibility for all Charges relating to the use of the Services regardless of whether such use is authorised, unauthorised, fraudulent or otherwise. The Customer must inform the Company as soon as reasonably practicable if it suspects that fraudulent or unauthorised use of the Services is occurring, although such notification will not limit the Customer's liability to pay the Charges as set out herein.

32.9 This Agreement shall come into force on and with effect from the date quoted or proposed and shall continue for the term stated within the same section. Thereafter for 12 months on a rolling basis unless terminated by either party giving to the other not less than three months prior written notice.

32.10 In consideration of the Services provided by the Company, the Customer shall pay all charges for the provision of the Services as notified to the Customer from time to time

32.11 The Company shall send invoices for the charges quarterly in advance.

32.12 The charges shall be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer.

32.13 The Company may at any time require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.

32.14 For the avoidance of doubt, the Customer shall be liable for all and any telecommunication charges payable to any third party arising out of the Customer's use of the Services.

32.15 The Company reserve the right to increase charges by up to 25% annually and will provide the customer with 3 months notice prior to this increase.

32.16 The Customer shall only reduce services by up to 25% of the annual revenue during the contract period.

## SECTION H: CLOUD/HOSTING/IAAS SERVICES

### 33. Provision of Hosting Services

This Service Agreement governs customer's purchase and use, in any manor, of all services, including but not limited to Cloud Services, Virtual Servers, Dedicated Hosting and Services Co-Location, Website Hosting, and Reseller Hosting, as described by Blueloop on quotes or proposal documentation.

#### 33.1. Renewal of Agreement Terms

Hosting / IAAS Contracts automatically renew at the end of the Initial Term for a minimum period of 12 months unless you provide Blueloop with notice of termination at least ninety (90) days prior to the end of the Initial Term or the Renewal Term, whichever is then applicable.

#### 33.2. Backups and Data Loss

(A). Your use of the service is at your sole risk. Blueloop is not responsible for files and data residing in your Hosted/IAAS environment. You agree to take full responsibility for the appropriate maintenance of files and data stored.

(B) Where and when Contracted, Blueloop generate backups of customer Hosted/IAAS server environments such as hosted servers to datacentre backup storage against an agreed retention (typically 30 days). Backups run nightly between 6pm and 8am.

(C) Where and when Contracted, Blueloop replicate customer systems offsite to our DR environment. The latest 2 copies of systems are retained. Replications run nightly between 6pm and 8am.

(D) Blueloop cannot warrant that data is fully recoverable from backup and replicas. We test both backups and replica recovery regularly but corruption, although rare, can happen. Blueloop will attempt to recover systems and data when requested by customers as described in Customer Support Agreements.

#### 33.3. Service Levels

##### 33.3.1. Definitions

(A) Blueloop Hosting/IAAS POP (Point of Presence) is defined as Blueloop owned and operated Hosting infrastructure consisting of solely selected Blueloop equipment housed within a single Blueloop managed data centre space.

(B) Blueloop Backbone means Blueloop owned and operated IP routing infrastructure consisting of solely selected Blueloop points of presence at which has installed measurement devices.

(C) Network Outage is defined as an instance in which no traffic can pass in or out of the Selected POP through which Customer connects to the Blueloop Backbone for more than 10 consecutive minutes.

(D) Hosting Uptime means the percentage of time across a month which a host is accessible via the Blueloop Backbone.

##### (E) Outage Window

- For unmanaged service plans, the hosting outage begins at the time the customer reports to Blueloop technical support that service is interrupted until the time of response by Blueloop that service has been restored.

- Managed service plans are monitored by Blueloop and do not require customer action to report a service interruption. The outage window concludes when monitoring shows the service restore and Blueloop confirms service functionality.

(F) Packet Loss means the average percentage of IP packets transmitted between Selected POPs during a calendar month that are not successfully delivered, as measured by Blueloop.

(G) Latency is defined as the average time required for round-trip packet transfers between Selected interfaces on the selected portions of the Blueloop Hosting Core Network during a calendar month, as measured by Blueloop.

##### 33.3.2 Hosting Uptime

(A) Blueloop's goal is to maintain 100% uptime of its hosted environments.

(B) Guaranteed hosting environment uptime commitment is 99.5% availability, except where service defines higher or lower uptime commitment.



(C) If uptime and availability is calculated to be less than 99.5% for a particular hosted website, server, co-location or other hosted service customers may request a credit towards their account per the following credit schedule based upon Hosting/IAAS Service fees only.

Availability	Credit Percentage
98.0% - 99.5%	10%
95% - 97.9%	20%
90% - 94.9%	30%
89.9% or below	50%

(D) Credits can only be used towards future billing charges.

(E) Credit is only applicable to the specific service on the overall account that was below 99.5% per the billing period in which the non-conformance occurred.

(F) Credit request can only apply to disputed SLA non-conformance in the last billing cycle. Billing cycles over thirty (30) days old are not contestable.

(G) Credit request must be sent via email to Blueloop support, Blueloop is allowed up to 30 days to respond to the credit request.

(H) Maximum credit amount is 50% of the service which has fallen below the set SLA.

(I) Credit decision is based solely on Blueloop's discretion.

#### 33.3.3 Packet Loss

(A) Blueloop will maintain a Packet loss level of 0.3% or better from hosted network interfaces to network interfaces of Blueloop's edge network routers at any single Blueloop Hosting POP.

(B) Blueloop uses commercially reasonable efforts to determine source of excess Packet Loss and remedy to correct the problem.

#### 33.3.4 Exceptions

(A) Scheduled and emergency maintenance windows to network and server infrastructure.

(B) Circumstances beyond Blueloop's reasonable control including without limitation; acts of any government body, war, sabotages, armed conflict, embargo, fire, flood, strike, interruption and delay of transportation of telecommunications.

(C) Inability to access Blueloop's network, unless such failure is caused by Blueloop.

(D) False SLA breaches reported as a result of outages or errors of any Blueloop measurement and monitoring systems.

(E) Email or webmail access, delivery and transmission.

(F) Customer access that uses security accounts such as FTP, POP, IMAP and SMTP.

(G) Customer acts or omissions – custom scripting or programming within website or hosted application, any negligence, power-cycling of devices, willful misconduct, breach of Acceptable Use Policy along with terms and conditions.

(H) DNS issues outside the control of Blueloop.

(I) DNS propagation of domain names.

(J) Browser or DNS caching that make access to your account appear inaccessible when others can still access it.

(K) Outages elsewhere on the Internet that hinder access to your account.

#### 33.4. Support

All hosted products and services provided by Blueloop are supported directly by Blueloop. Customers are to report issues and outages of supplied products and services directly to Blueloop and not to Blueloop suppliers or licensing companies.

#### 33.5. Acceptable Use Policy ("AUP")

(A) Customer represents that it has read Blueloop acceptable use policy ("AUP") and its privacy policy ("Privacy Policy") as appears on its website respectively.

(B) Without limiting the generality of the provisions of Subsection 33.5(A) above, Customer will not allow the Service or Blueloop equipment to be used for activities prohibited by the AUP. Third party violations of the AUP using Customer's Service, including any IP addresses, points of access to the Internet, systems, software, or equipment assigned to or belonging to Customer, will be considered violations by Customer.

#### 33.6. Zero Tolerance Spam Policy

(A) We take a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists" and "double opt-in" will be treated as spam. Any user who sends out spam may have their account terminated without notice.

(B) Blueloop reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with this policy, at its sole discretion. Blueloop also reserves the right to make any such modifications in an emergency at our sole discretion.

(C) Blueloop reserves the right to charge the holder of the account used to send any unsolicited e-mail a clean up fee. This cost of the clean up fee is left entirely to the discretion of Blueloop. All rights reserved.

#### 33.7. Content

(A) You will not in any way use html, ASP, VB, .NET, java or perl code that will result in unnecessary traffic nor will you install any client side applications that will result in excess traffic. The intent of Blueloop is to provide space to serve web documents, not as an off-site storage area for electronic files. You will also not misrepresent the site in such a way that will result in needless traffic. Some examples of unacceptable content or links include: pirated software, hacker programs or archives, Warez sites, Spamware, Copyrighted MP3s and IRC bots. Blueloop does not support; (i) sexually explicit, obscene or pornographic content (whether in text or graphics); (ii) speech or images that are offensive, profane, hateful, threatening, harmful, defamatory, libelous, harassing, discriminatory (whether based on race, ethnicity, creed, religion, gender, sexual orientation, physical disability or otherwise) or that promote any illegal activity; and/or (iii) graphic violence. We will terminate any account that does not conform to these requirements. Blueloop reserves the right to terminate any account, for any reason, without prior notice or warning.

#### 33.8. IP Addresses

Internet Protocol Numbers ("IP numbers") provided or assigned by Blueloop in connection with the Services at all times remain the property of Blueloop and are not portable, and the Customer shall have no rights with respect thereto. Assignment of IP Numbers are subject to ICANN and ARIN guidelines and are not guaranteed, and Blueloop may modify such assignments at any time in its sole discretion. Customer shall provide an accurate host count and IP address justification at the time of contract signing and such count shall be subject to verification by Blueloop.

Blueloop may "swap-out" any IP address assigned to your Service with another IP address at any time. Blueloop may revoke any Additional IP assigned to you for more than ninety (90) days if, at that time, you not are using at least 80% of your assigned IP addresses.





### 33.9. Illegal activities

(A) Illegal activities, to include; unauthorized distribution or copying copyrighted software, violation of UK export restrictions, harassment, fraud, trafficking in obscene material, and other illegal activities will be reported to all regulatory, administrative and/or governmental authorities. Blueloop reserves the right to report all such activities.

(B) You are restricted from removing, modifying or obscuring any copyright, trademark or other proprietary rights notices that are contained in or on the Licensed Products.

(C) You are prohibited from reverse engineering, decompiling, or disassembling the Licensed Products, except to the extent that such activity is expressly permitted by applicable law.

### 33.10. Price Change

(A) The amount you pay for hosting services will not increase from the date of purchase until the end of the service agreement, unless upgrades/changes in service are requested.

(B) Renewal of service agreements are subject to potential price increases due to software licensing increases, data center power/storage/transit/maintenance cost increases. Customer will be made aware of increases before time of renewal and required to approve price escalations or terminate service agreement.

### 33.11. Software Licensing

Any software licenses obtained on Customer's behalf (such as licenses from the Microsoft/Veeam/VMware etc) are subject to price increases to match any increases made by the software manufacturer.

### 33.12. Warranties and Disclaimer

(A) Customer expressly acknowledges and agrees that all use of the services is at customer's sole risk. Blueloop will not be responsible for any damages your business may suffer. Blueloop makes no warranties of any kind, expressed or implied for services provided. Blueloop disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, no deliveries, wrong delivery, and any and all service interruptions caused by Blueloop and its employees.

(B) For those services for which Blueloop offers a system of credits or rebates for services interruptions, regardless of cause, such credits or rebates shall be Customer's sole remedy therefore.

(C) For direct, proven damages arising out of its performance or failure to perform hereunder, Blueloop's liability shall be limited to an amount equivalent to the charges actually paid by Customer during the period, which such damages occur.

(D) Notwithstanding the foregoing, neither Blueloop nor its affiliates, officers, directors, employees or agents shall be liable to Customer or to any third party for any direct, consequential, incidental, exemplary, or punitive losses or damages, including, without limitation, lost profits or data, regardless of the cause thereof, even if Blueloop is advised of the possibility of such loss.

### 33.13. Indemnification

(A) Customer agrees that it shall defend, indemnify, save and hold Blueloop harmless from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Blueloop, its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless Blueloop against liabilities

arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Blueloop; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customers from Blueloop's servers.

(B) You agree that Blueloop's maximum liability to you under this agreement for all damages, losses, costs and causes of actions from any and all claims (whether in contract, tort or other legal theory) shall be limited to the lesser of (a) the total amount of service fees actually paid by you to Blueloop for the three month period immediately preceding the date on which the damage or loss occurred or the cause of action arose, (b) proven direct damages, and (c) five thousand pounds (£5,000.00).

(C) The terms of this Indemnification Section shall survive any termination of this Agreement.

### 33.14. Force Majeure

Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including, but not limited to, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Blueloop), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Blueloop is unable to provide Service(s) for a period of thirty (30) consecutive days as a result of a continuing force majeure event, the Customer may cancel the Service(s), but there shall be no liability on the part of Blueloop.

### 33.15. Assignment

The Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Blueloop, and any attempted assignment or delegation without such consent will be void. Blueloop may assign this Agreement in whole or part. Blueloop also may delegate the performance of certain Services to third parties, including Affiliates. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

### 33.16. Severability

In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

### 33.17. Relationship of Parties

This Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Blueloop and the Customer. Neither Blueloop nor the Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

### 33.18. Notices

It is your responsibility to provide accurate and complete account and contact information, including a valid e-mail address, to Blueloop during the Sign-up Process. It is also your responsibility to inform Blueloop promptly of any changes to



your account or contact information. Blueloop has no responsibility for communications that are misdirected as a result of your failure to provide Blueloop with updated contact information or as a result of the suspension or termination of your Services.

Blueloop may provide notice to you required by this Agreement via e-mail at the address provided by you. You agree that notice to you at this address is deemed sufficient regardless of your receipt of such email. You must provide all notices to Blueloop required in writing to Blueloop, Blueloop House, Ilchester Road, Yeovil, Somerset. BA21 3AA or as changed by Blueloop and communicated by email.

#### 33.19. Changes to the Policies and Terms of Service

Blueloop reserves the right to revise its policies at any time without notice.

### SECTION I: Acceptable Use Policy

#### 34. AUP for Cloud/Hosting/IAAS Services

This Acceptable Use Policy (the "Policy") describes prohibited uses of the Cloud/Hosted/IAAS services (the "Services") offered by Blueloop Limited. and its affiliates (individually and collectively "Blueloop") and the website, or portal, if any, associated with the Services (the "Services Site"). The examples described in this Policy are not exhaustive. Blueloop may modify this Policy at any time. By using the Services or accessing the Services Site, you agree to the latest version of this Policy. If you violate the Policy or authorise or help others to do so, Blueloop may suspend or terminate your use of the Services.

You may not use, or encourage, promote, facilitate or instruct others to use, the Services or Services Site for any illegal, harmful or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, or offensive.

##### 34.1. No Illegal, Harmful, or Offensive Use or Content

You may not use, or encourage, promote, facilitate or instruct others to use, the Services or Services Site for any illegal, harmful, fraudulent, infringing or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, infringing or offensive. Prohibited activities or content include:

(A) Illegal, Harmful or Fraudulent Activities. Any activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation, including disseminating, promoting or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming.

(B) Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others.

(C) Offensive Content. Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, or depicts non-consensual sex acts.

(D) Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

(E) Illegal Export. Exporting software, technical information, encryption software or technology, in violation of international or regional export control laws.

(F) Data Privacy Misuse. Using any Personal Information or Personal Data in violation of and as defined by applicable privacy laws and regulations.

##### 34.2. No Security Violations

You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "System"). Prohibited activities include:

(A) Unauthorized Access. Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System.

(B) Interception. Monitoring of data or traffic on a System without permission.

(C) Falsification of Origin. Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route.

The legitimate use of aliases and anonymous remailers is not prohibited by this provision.

(D) Revealing your account password to others or allowing use of your account by others, including to family or friends when work is being done at home, or otherwise circumventing user authentication or security of any host, network or account.

##### 34.3 No Network and System Abuse

You may not make network connections to any users, hosts, or networks unless you have permission to communicate with them. Prohibited activities include:

(A) Monitoring or Crawling. Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.

(B) Denial of Service (DoS). Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.

(C) Intentional Interference. Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.

(D) Operation of Certain Network Services. Operating network services like open proxies, open mail relays, or open recursive domain name servers.

(E) Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

(F) Excessive use of Hosted CPU and Memory for example Bit Coin Mining.

##### 34.4. No E-Mail or Other Message Abuse

You will not distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like "spam"), including commercial advertising and informational announcements. You will not distribute, publish, send, or facilitate any form of harassment via email, telephone or paging, whether through language, frequency, or size of messages. You will not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission. You will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy of that provider.

##### 34.5. Monitoring and Enforcement

Blueloop reserves the right, but does not assume the obligation, to investigate any violation of this Policy or misuse of the Services or Services Site. Blueloop may:



(A) investigate violations of this Policy or misuse of the Services or Services Site; or

(B) remove, disable access to, or modify any content or resource that violates this Policy or any other agreement we have with you for use of the Services or the Services Site.

Blueloop may report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Blueloop's reporting may include lawfully required disclosure of Customer and Subscriber information. Blueloop also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

#### **34.6. Reporting of Violations of this Policy**

If you, or any of your subscribers, become aware of any violation of this Policy, you will immediately notify Blueloop and provide Blueloop with assistance, as requested, to stop or remedy the violation. To report any violation of this Policy, please email [support@blueloop.net](mailto:support@blueloop.net).