



BlueWave Communications

THE Island's Communications provider

an **aql** company

## TERMS AND CONDITIONS OF SUPPLY

*BlueWave Communications Limited*

*The **TERMS AND CONDITIONS OF SUPPLY** set out below apply to all services ordered by you and provisioned by BlueWave Communications Limited (company number 119598C) whose registered office is at Unit 6, Tower House, Douglas, IM1 2EZ ("BlueWave"). By ordering any services from BlueWave you are deemed to have read and agreed to these Terms and Conditions of Supply.*

### DEFINITIONS

"Contract" shall mean the contract for the provision of Services between BlueWave and you incorporating these Terms and Conditions of Supply, the BlueWave Order Form (where completed by yourself and accepted by BlueWave) and (where applicable) the Price List or as set out in the applicable separate Contract;

"Fee" the fees (including any applicable VAT) due for the provision of the Services as set out in the Price List or, in the absence of provision in the Price List, the fees for the provision of the Services agreed between you and BlueWave as detailed in the applicable Order Form accepted aql in writing;

"Intellectual Property Rights" shall mean any and all intellectual property rights and similar rights including, without limitation, patents, trade marks or trade names, service marks, brand names, registered designs, design rights, rights in databases, Know-How, copyrights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto and all extensions and renewals thereto;

"Order Form" shall mean the BlueWave order form issued by the Customer to you;

"Price List" shall mean BlueWave's published charges for the provision of the Services from time to time;

"Services" shall mean any service or facility provided to you by BlueWave as detailed on the relevant Order Form or Contract and/or as accessed or used you via the BlueWave website;

### 1. Use of the Services

1.1 You represent, undertake and warrant to BlueWave that you will use Services provided BlueWave only for lawful purposes. In particular, you represent, warrant and undertake that:

1.1.1 you will not use the Services in any manner which infringes any law or regulation or which infringes the rights of or, causes annoyance, inconvenience or needless anxiety to any third party, nor will you authorise or permit any other person to do so;

1.1.2 you will not use the Services to post, link to or transmit: (a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way; (b) any material containing a virus or other hostile computer program; and/or (c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any Intellectual Property Rights;

1.1.3 (a) you will keep secure any identification, password and other confidential information relating to the Services and shall notify BlueWave immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information;

1.1.3 (b) the customer shall fully indemnify against any and all costs, claims, demands, losses, damages, expenses (including, without limitation, legal expenses) and liabilities of whatsoever nature suffered or incurred by (aq) relating to any access or attempted access or activity or malicious activity deemed to have originated from or associated with the Customers of the Service. Such origination may include the use of the Customers password or origination from the Customers IP address"

1.1.4 you will observe the procedures which BlueWave may from time to time prescribe and shall make no use of the Services which is detrimental to BlueWave's other customers;

1.1.5 you will procure that the Services are used in accordance with all applicable legislation (including data protection legislation) and in a secure manner;

1.1.6 (if you are an individual), you are using the services for business use and are at least 18 years of age; and

1.1.7 (if you are a company), the Services will not be used anyone under the age of 18 years.

1.2 Whilst BlueWave will use reasonable endeavours to ensure the integrity and security of the Services, BlueWave does not guarantee that the Services will be error or interruption free or free from unauthorised users or hackers.

1.3 BlueWave may from time to time:

1.3.1 temporarily suspend part or all of the Services without notice for the purposes of repair, maintenance or improvement. BlueWave undertakes to use reasonable endeavours to restore the Services as soon as possible after any such suspension;

1.3.2 give instructions regarding the use of the Services which in BlueWave's reasonable opinion are necessary in the interests of safety or to maintain or improve the quality of the Services provided BlueWave and any such instructions shall, whilst they are in force, be deemed to form part of the Contract between You and BlueWave; and/or

1.3.3 vary the technical specification of the Services for operational needs.

## 2. Fees and Payment

2.1 In consideration of the payment of the appropriate Fees, BlueWave will provide the Services. The appropriate Fees for the provision of Services are such Fees as are expressly agreed in writing you and BlueWave in respect of the Services or, in default of such agreement, such Fees as are calculated in accordance with the Price List in force at the time you submit a completed Order Form for the provision of the Services to BlueWave.

2.2 All Fees must be paid in full, upon receipt, without set off or deduction in UK pounds sterling either:

2.2.1 debit or credit card when you make your order if you complete an Order Form on line; or

2.2.2 payment of BlueWave's invoice debit or credit card or cheque within 14 days of invoice date if you submit an Order Form fax or post. You can find details of the credit and debit cards that are accepted BlueWave following the "order" link on the Website. Please note that if you make payment cheque and your bank returns the cheque to BlueWave unpaid, you may be liable for an administrative fee of £25. BlueWave may also make an administrative charge for refunding credit card transactions.

2.3 Fees quoted by BlueWave (whether in the Price List or otherwise) are exclusive of Value Added Tax. If Value Added Tax is applicable, you must pay it in addition to the quoted Fee at the rate prescribed law.

2.4 BlueWave reserves the right to increase the Fees for Services in respect of which it has entered into a Contract with you upon 14 days prior written notice to you.

2.5 Without prejudice to BlueWave's other rights and remedies under these Conditions and/or at law, if any sum payable is not paid on or before the due date, BlueWave shall be entitled forthwith to:

2.5.1 withhold or, where provision of the Services has commenced, suspend the provision of Services to you; and/or

2.5.2 charge interest (both before and after judgment) at a rate of 4% over the base rate from time to time of Barclays Bank Plc on the overdue sum; and/or

2.5.3 charge you an administration fee in respect of time spent and costs incurred BlueWave in taking steps to recover payment of the due sums. BlueWave also reserves the right in respect of Hosting and domain name registration renewals to charge you a £25 reconnection charge if such services are suspended under this clause 3.5.

2.6 we reserve the right to attempt to recover monies for outstanding invoices by contacting the admin email address or owner email address for the account, or by any other contact details we have been provided pertaining to that account.

2.7 BlueWave reserves the right to charge a Fee for support or administration which is deemed by BlueWave to be outside the scope of normal services. This may include any support out of office hours, support or administration not directly related to the restoration of a service affecting issue or loss of passwords. In any event, the final decision as to

whether support will be chargeable will lie with BlueWave and notified to the customer in advance of provision of such support. Fees will be charged per hour or part thereof and rates are available on request. The charge and payment of the Fee does not constitute that the result of the support actions shall be correct or free from errors.

2.8 The Billing Party may in a separate invoice (containing the information referred to in these Billing Procedures) make backdated claims for amounts outstanding from a previous Billing Period which were not previously invoiced for technical or other reasons. For the avoidance of doubt the failure of the Billed Party to collect any amount from any end user or other customer shall not constitute a legitimate reason for non-payment of the Billing Party's invoice and the Billing Party shall not be liable for any amount which the Billed Party fails to collect from customers.

2.9 We request that a valid VAT number is supplied prior to making payment should you believe you're exempt from VAT payments in the United Kingdom. You may be required to request removal of VAT from subsequent invoices. Unfortunately we do not offer refunds of paid VAT should it not have been requested to be removed prior to payment being made and/or valid VAT number supplied.

### **3. Liability**

3.1 BlueWave shall not in any way be liable for any loss of profits, anticipated savings, goodwill or business opportunity, for the loss, corruption or destruction of data, for injury to reputation or third party losses or for indirect, consequential or special loss or damage regardless of form of action, whether in tort (including negligence) contract, strict liability or otherwise and regardless of whether BlueWave knew or had reason to know of the possibility of the loss, injury or damage in question.

3.2 Nothing in these Conditions shall operate so as to exclude BlueWave's liability for death or personal injury resulting from its negligence or for fraudulent misrepresentation.

3.3 BlueWave's total aggregate liability under any Contract for any claim arising out of or in connection with the provision of the Services shall be limited to the Fees paid you in respect of the Services which are the subject of any such claim.

3.4 In any event no claim shall be brought against BlueWave unless you notify BlueWave of the claim within two years of it arising.

### **4. Indemnity**

You shall indemnify and hold BlueWave harmless from and against any breach you of these Conditions and/or the terms of any Contract and any claim brought against BlueWave a third party resulting from the provision of Services to you and your use of the Services other than in accordance with the terms of these Conditions and the applicable Contract.

### **5. Warranties**

5.1 BlueWave warrants that it will provide the Services with reasonable care and skill.

5.2 All conditions, terms, warranties and representations, whether imposed statute,

operation of law or otherwise, that are not expressly stated in these Conditions are here excluded to the fullest extent permitted by law.

## **6. Matters Beyond BlueWave's Reasonable Control**

BlueWave is not liable for any breach of contract or any delay or failure in its performance of any of its obligations under a contract when caused as a result of any matter beyond its reasonable control including, but not limited to, war, civil disorder, industrial disputes, adverse or extreme weather, acts of local or central government or other competent authorities or failure of other service providers, registries or other suppliers.

## **7 Termination**

7.1 BlueWave may terminate its Contract with you at any time, immediately upon written notice via post, email or SMS message if you:

7.1.1 breach any term of the Contract; or

7.1.2 are subject to Insolvency Proceedings.

7.1.3 if BlueWave consider your behaviour or interaction with any member of BlueWave staff to be inappropriate or abusive. In such an event, the final decision shall rest with BlueWave without burden of proof.

7.1.4 refuse to comply with any of BlueWave's prescribed methods of interacting with BlueWave, which may change from time to time to account for BlueWave working practices, for example submitting support via support ticket.

7.2 Either you or BlueWave may terminate your Contract at any time upon at least 30 days notice to the other expiring on the last day of the Minimum Contract Term (if any) or at any time thereafter. If no Minimum Contract Term is specified, the Minimum Contract Term shall be deemed to equal the period for which the services were purchased. The notice to terminate shall take effect upon the last day of the notice period. In any event you must pay the Fees for all Services provided to you up to and including the date of termination or the Minimum Contract Term whichever is the later date.

7.3 BlueWave reserves the right to terminate any Contract at any time (notwithstanding any Minimum Contract Term) giving to you not less than 30 days prior written notice of termination. If BlueWave terminates your Contract under this clause 7.3 it will refund any Fees that you have paid in advance for Services that, as a result of BlueWave's termination of the Contract, you will not receive.

7.4 Termination and/or expiry of your Contract is without prejudice to any rights and/or liabilities accrued as at the date of expiration or termination.

7.5 On termination or suspension of Services under the Contract BlueWave shall be entitled to immediately block any website or Service provided to You or hosted for You BlueWave as part of the Services and to remove all data located on it. BlueWave shall be entitled to delete all such data but BlueWave may, at its discretion, hold such data for such period as

BlueWave may decide, to allow you to collect it at your expense, subject to payment in full of any amount outstanding under Contract and payable to BlueWave. BlueWave shall further be entitled to post such notice in respect of the non-availability of such website as BlueWave thinks fit.

7.6 If your account is suspended for any reason we reserve the right to charge a re-connection charge of up to £60.

## **8. Dispute Resolution**

BlueWave are committed to providing excellent service and endeavour to deal with any complaint fairly and within a reasonable period of time. However, should a customer remain dissatisfied with any aspect of our service, they are welcomed to contact us whereupon we will do our utmost to resolve the problem as quickly as is reasonably practicable. We operate a complaints procedure to help ensure that any complaints are dealt with efficiently and to your satisfaction.

If you have a problem with the way we have sold, provisioned or delivered the service to you, you should:

- In the first instance, telephone us on 01624640620 or write via email to [support@bwc.im](mailto:support@bwc.im). An Account Manager aims to respond to you within 24 hours. Please ensure you retain the reference number for your conversation. Our Account Managers will do their utmost to successfully resolve any problems at that point. If, however, your problem cannot be resolved during the phone call, we will agree a course of action with you. If you remain unhappy with the way in which your complaint has been handed in the first instance, you may contact the Technical Support Manager mentioning your case reference number. They will respond and aim to resolve your complaint within 48 hours.
- If the Technical Support Manager is unable to resolve the issue to your satisfaction, you may escalate your concern to the Customer Relationship Manager and again if unsuccessful, to the Chief Operating Officer. In both cases, they will aim to respond to you within 48 hours.

## **9. Waiver**

The failure or delay of BlueWave to enforce or exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect BlueWave's right later to enforce or exercise it. No single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

## **10. Validity**

The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.

## **11. Non-solicitation of Employees**

You agree that you shall not on your own account or in partnership or association with any person, firm, company or organisation for the duration of this agreement and for a period of six (6) months thereafter, directly or indirectly solicit, entice away, employ or engage (or endeavour to do the same) any employees of BlueWave who were involved in the performance of its obligations under this agreement without the prior written consent of BlueWave.

## **12. Notices**

Any notice to be given you or BlueWave to the other may be sent either email, fax or recorded delivery to the address of the other party as appearing in the relevant Contract (or, in the case of BlueWave, as appearing on the Website) or such other address as either party may from time to time have communicated to the other in writing. If sent email a notice shall, unless the contrary is proved, be deemed to be received on the day it was sent or, if sent fax, shall be deemed to be served on receipt of an error free transmission report or, if sent recorded delivery, shall be deemed to be served two days following the date of posting.

## **13. Intellectual Property Ownership**

All Intellectual Property Rights in and to the Services provided BlueWave are, as between you and BlueWave, the property of and shall vest in and be the property of BlueWave.

## **14. Third Party Rights**

Unless otherwise expressly provided, these Terms and Conditions of Supply and any other Contract, Schedule, Addendum or Terms and Conditions issued by BlueWave do not, by virtue of the Contracts (Rights of Third Parties) Act 2001 or otherwise, confer any rights or benefits on any person or class of persons existing now or in the future, who is not a party to except that a Party's assignee or successor will be deemed to be a party to the respective agreement.

## **15. Severability**

If any provision of any Contract, Schedule, Addendum or Terms and Conditions issued by BlueWave shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.

## **16. Counterparts**

Each Order Form and Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart shall constitute an original of the respective Order Form and Contract, but together the counterparts shall constitute one document.