

BLULOGIX PLATFORM TERMS OF SERVICE & SERVICE LEVEL AGREEMENT

BLULOGIX LLC

Terms of Service (Version 2.2)

THESE TERMS OF SERVICE (THE “TERMS”) ARE A LEGAL AGREEMENT BETWEEN YOU (“CUSTOMER”) AND BLULOGIX LLC. (“BLULOGIX”). BY CLICKING THE “I ACCEPT” BUTTON, EXECUTING AN ORDER FORM THAT INCLUDES THESE TERMS BY REFERENCE OR USING THE BLULOGIX SERVICES, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS REVIEWED AND ACCEPTS THESE TERMS. IF CUSTOMER DOES NOT AGREE WITH ALL OF THESE TERMS, DO NOT ACCESS OR OTHERWISE USE THE BLULOGIX SERVICES. BLULOGIX MAY MAKE CHANGES TO THE BLULOGIX SERVICES AT ANY TIME. IN ADDITION, BLULOGIX MAY MAKE CHANGES TO THESE TERMS AT ANY TIME, AND BLULOGIX WILL POST NOTICE OF THE CHANGES AND THE UPDATED TERMS AND/OR SEND AN E-MAIL NOTIFICATION TO THE E-MAIL ADDRESS OF RECORD FOR CUSTOMER. CUSTOMER’S CONTINUED USE OF THE BLULOGIX SERVICES AFTER SUCH CHANGES HAVE BEEN POSTED WILL SIGNIFY CUSTOMER’S ASSENT TO AND ACCEPTANCE OF THE REVISED TERMS.

1. Orders, Access and Use

1.1 Orders; Statements of Work.

Subject to the terms and conditions contained in these Terms, Customer may purchase licenses to access and use the BluLogix Services through the use of Order Forms. Each Order Form is deemed incorporated into these Terms by reference. If there is any inconsistency between an Order Form and these Terms, the Order Form shall control. Each Order Form shall set out a description of the applicable BluLogix Services to be provided by BluLogix and the costs associated with such BluLogix Services. Customer agrees BluLogix is the exclusive provider to Customer for listed Services for the term of the agreement.

1.2 Ancillary Services.

Ancillary Services will be performed by BluLogix in accordance with one or more Statements of Work executed by the Parties from time to time during the Term. Each SOW will include, at a minimum: (i) a description of the scope of Ancillary Services, (ii) any work product or other deliverables to be provided to Customer (each a “Deliverable”), (iii) the schedule for the provision of Ancillary Services, (iv) the applicable fees and payment terms for such Ancillary Services. All SOWs shall be deemed part of and subject to these Terms. If there is any inconsistency between an SOW and these Terms, the SOW shall control. If either Customer or BluLogix requests a change to the scope of Ancillary Services described in a SOW, the party seeking the change shall propose such change by written notice. Promptly following the other party’s receipt of the written notice, the parties shall discuss and agree upon the proposed changes. BluLogix will prepare a change order document describing the agreed changes to the SOW and any applicable change in fees and expenses (a “Change Order”). Change Orders are not binding unless and until executed by both parties. Executed Change Orders shall be deemed part of, and subject to, these Terms. BluLogix and Customer shall cooperate to enable BluLogix to perform the Ancillary Services according to the dates of performance and delivery terms set forth in each SOW. In addition, Customer shall perform any Customer obligations specified in each SOW.

1.3 Provision of Access.

Subject to the terms and conditions contained in these Terms, BluLogix hereby grants to Customer and its Authorized Users a non-exclusive, non-transferable, non-sublicenseable right to access the features and

functions of the applicable BluLogix Service ordered pursuant to an Order Form during the Term set forth below, and solely for Customer's internal business purposes. On or as soon as reasonably practicable after the Effective Date, BluLogix shall provide to Customer the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Customer and its Authorized Users to access the BluLogix Services. Customer and any Authorized User may only use the BluLogix Services in accordance with the Access Protocols.

1.4 Responsibility for Application and Content Hosting.

BluLogix shall, at its own expense, provide for the hosting of the BluLogix Services which is accessible as part of the BluLogix Services through the BluLogix Cloud Suite, provided that nothing herein shall be construed to require BluLogix to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware required by Customer or any Authorized User to provide access from the Internet to the BluLogix Services.

1.5 Usage Restrictions.

Customer will not use the BluLogix Services for any purposes beyond the scope of rights granted to Customer under these Terms. Without limiting the generality of the foregoing, Customer will not (a) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the BluLogix Services are compiled or interpreted, and Customer acknowledges that nothing in these Terms will be construed to grant Customer any right to obtain or use such code or any objects; (b) allow third parties other than Authorized Users to gain access to or use the BluLogix Services; (c) use the BluLogix Services in any time-sharing or services bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (d) modify or create any derivative works of the BluLogix Services (or any components thereof), except with the prior written consent of BluLogix; (e) combine or integrate the BluLogix Services with hardware, software or other technology not provided to Customer by BluLogix hereunder (other than by means of interfaces provided or enabled by BluLogix during the Term); or (f) use the BluLogix services in any manner that drives utilization beyond agreed use; Customer shall notify BluLogix promptly of any unauthorized access or use of the BluLogix Services known to Customer. Customer will ensure that its use of the BluLogix Service complies with all applicable laws, statutes, regulations or rules.

1.6 Retained Rights; Ownership.

(a) Ownership and use of Customer Content. Customer retains all right, title and interest in and to the Customer Content, and BluLogix acknowledges that it neither owns nor acquires any additional rights in and to the Customer Content not expressly granted by these Terms. BluLogix further acknowledges that Customer retains the right to use the Customer Content for any purpose in Customer's sole discretion. Subject to the foregoing, Customer hereby grants to BluLogix a non-exclusive, right and license to use the Customer Content during the Term for the limited purposes of performing the BluLogix Services under these Terms.

(b) Ownership of BluLogix Services. Subject to the rights granted in these Terms, BluLogix retains all right, title and interest in and to the BluLogix Service, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by these Terms or any licenses to the software used to provide the BluLogix Services. Customer further acknowledges that BluLogix retains the right to use the foregoing for any purpose in its sole discretion.

2. Customer Responsibilities

2.1 Authorized Users Access to Services.

Customer may permit any Authorized Users to access and use the features and functions of the BluLogix Service as contemplated by these Terms. User IDs cannot be shared or used by more than one Authorized User at a time.

2.2 Customer Responsibility for Data and Security.

Customer and its Authorized Users shall have access to the Customer Content and shall be responsible for all changes to and/or deletions of Customer Content and the security of all passwords and other access protocols required in order to access the BluLogix Services.

2.3 Service Rules and Guidelines.

Customer and all Authorized Users shall use the BluLogix Services solely for its internal purposes as contemplated by these Terms and shall not use the Service to: (a) send any form of duplicative and unsolicited messages; (b) harvest, collect, gather or assemble information or data regarding other users without their consent; (c) transmit through or post on the BluLogix Service unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (d) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (e) interfere with or disrupt the integrity or performance of the BluLogix Service or the data contained therein; (f) attempt to gain unauthorized access to the BluLogix Service, computer systems or networks related to the BluLogix Service; or (g) interfere with the use and enjoyment of the BluLogix Service by any other user.

3. Fees and Expenses; Payments

3.1 Fees.

In consideration for the access rights granted to Customer and the services performed by BluLogix under these Terms, Customer will pay to BluLogix, without offset or deduction, all fees required by a particular Order Form. All fees will be billed and paid in U.S. dollars in accordance with the timing set forth in the Order Form or, if not expressly set forth therein, within 10 days following receipt of the applicable invoice. Fees are calculated as a percentage of total aggregate invoiced amount, to include taxes, with no adjustment for credits, exclusive of billing errors. Customer is obligated to confirm invoices monthly. If invoices are not confirmed, or Customer account has been suspended, Customer will be invoiced based on the last invoice confirmation total. Additional fees will be required to bring accounts to date once a confirmation period has been missed.

3.2 Disputed Fees.

If Customer disputes any fees, taxes, or other charges billed by BluLogix, Customer shall notify BluLogix, in writing, of the disputed amount and any relevant information regarding the circumstances of the dispute and shall pay the undisputed amounts. BluLogix shall acknowledge receipt of the dispute information in writing to Customer. All parties agree to work cooperatively to resolve any such disputed amounts.

3.3 Taxes.

Customer will be responsible for payment of any applicable sales, use, withholding and other taxes and all applicable export and import fees, customs duties and similar charges which are at any time imposed upon or collectible as a result of payments to BluLogix under these Terms.

4. Treatment of Confidential Information

4.1 Ownership of Confidential Information.

The Parties acknowledge that during the performance of these Terms, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

4.2 Mutual Confidentiality Obligations.

Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes described herein; (b) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (c) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of these Terms; and (e) to the extent practicable, return or destroy, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of these Terms. Notwithstanding the foregoing, Customer agrees that BluLogix may collect, and will own, aggregated statistical data regarding Customer's use of the BluLogix Services and provide such aggregated statistical data to third parties.

4.3 Confidentiality Exceptions.

Notwithstanding the foregoing, the provisions of Sections 4.1 and 4.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under these Terms, including to make such court filings as it may be required to do.

5. Representations and Warranties

Each Party hereby represents and warrants (a) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that entering into and performing these Terms will not conflict with or violate any provision of any law having applicability to such Party; and (c) that these Terms constitute a valid and binding obligation of such Party and are enforceable against such Party in accordance with its terms.

BluLogix warrants that it will provide the Ancillary Services in a professional and workmanlike manner substantially consistent with general industry standards.

BluLogix warrants that (i) the BluLogix software used to provide the BluLogix Services will function in accordance with the applicable specifications described in the published features and functions of the BluLogix Services, and (ii) it will provide the BluLogix Services in compliance with the Service Level Agreement attached to these Terms as Exhibit A (the "Service Level Agreement").

6. Disclaimers, Exclusions and Limitations of Liability

6.1 Internet or Hosting Service Disruption.

THE BLULOGIX SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, CLOUD HOSTED APPLICATIONS AND ELECTRONIC COMMUNICATIONS. BLULOGIX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

6.2 Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BLULOGIX SERVICE, AND ALL SERVICES PERFORMED BY BLULOGIX ARE PROVIDED "AS IS," AND BLULOGIX DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY, QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. BLULOGIX DOES NOT WARRANT THAT THE APPLICATION SERVICE OR ANY OTHER SERVICES PROVIDED BY BLULOGIX WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

6.3 Exclusions of Remedies; Limitation of Liability.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUMULATIVE LIABILITY OF BLULOGIX TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO CUSTOMER'S USE OF ANY PRODUCT OR SERVICE PROVIDED BY BLULOGIX, THESE TERMS, AND ALL ANCILLARY SERVICES, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO BLULOGIX BY CUSTOMER UNDER SECTION 3.1 DURING THE 12-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THESE TERMS HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

6.4 Essential Purpose.

Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 6 form an essential basis of the agreement between the Parties and an agreed allocation of risk, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in determining whether to engage in the transactions contemplated by these Terms, and that absent such disclaimers, exclusions and limitations of liability, the fees payable for the BluLogix Services would be substantially higher and these Terms would be substantially different. The limitations in this section 6 will survive and apply even if any limited remedy specified in these Terms is found to have failed in its essential purpose.

7. Intellectual Property Infringement

BluLogix agrees to indemnify, defend and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys fees) or damages resulting from any claim by any third party that the BluLogix Services infringe any United States patent or copyright (an “Infringement Claim”), provided that: (a) Customer promptly notifies BluLogix in writing of such Infringement Claim; (b) BluLogix has sole control of the defense of and all settlement negotiations relating to such Infringement Claim; (c) Customer cooperates fully in the defense of the Infringement Claim; and (d) Customer has paid all accrued fees due hereunder. If an Infringement Claim is made or appears possible, Customer agrees to permit BluLogix, at BluLogix’ sole discretion and expense, to enable Customer to continue to use the BluLogix Service or to modify or replace any infringing material to make it non-infringing. If BluLogix determines that none of these alternatives is reasonably available, Customer shall, upon written request from BluLogix, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim and BluLogix will refund to Customer any amounts paid in advance by Customer for the use of such materials. This Section 7.1 shall not apply if the alleged infringement arises, in whole or in part, from (i) modification of the BluLogix Service by Customer, or (ii) combination, operation or use of the BluLogix Service with other software, hardware or technology not provided by BluLogix, or (iii) related to the Customer Content.

8. Term and Termination

8.1 Term.

The term of these Terms (the “Term”) shall be one year commencing on the Activation Date, with automatic renewal for successive one year terms, unless either party provides written notice of its desire not to renew at least 30 days prior to the expiration of the then-current term.

8.2 Termination for Breach.

Either Party may, at its option, terminate these Terms and any SOW in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within 30 days of receipt of such notice, and these Terms and any SOW will terminate in the event that such cure is not made within such 30 day period.

8.3 Termination Upon Bankruptcy or Insolvency.

Either Party may, at its option, terminate these Terms and any SOWs immediately upon written notice to the other Party, in the event (a) that the other Party becomes insolvent or unable to pay its debts when due; (b) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, such petition if filed against the Party and such petition is not removed within 90 days after such filing; (c) the other Party discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of such other Party’s creditors.

8.4 Effect of Termination.

Upon any termination of these Terms, Customer will (a) immediately discontinue all use of the BluLogix Service and any BluLogix Confidential Information; and (b) promptly pay to BluLogix all amounts due and payable. Within 36 hours after the effective date of any termination of these Terms and payment of all amounts due to BluLogix, BluLogix shall make available to Customer all Customer Content. After a 30 day period, however, BluLogix shall have no obligation to maintain or provide any Customer Content to Customer.

8.5 Survival.

The provisions of Sections 1.6, 4, 6, 7, 8.4, 8.5, 8.6, and 9 will survive the termination of these Terms.

8.6 Suspension of Service.

If Customer fails to pay undisputed amounts in accordance with the terms and conditions hereof and the applicable Order Form, BluLogix shall have the right, in addition to any of its other rights or remedies, to suspend the BluLogix Services to Customer, without liability to Customer until such amounts are paid in full. Minimum fees will continue to accrue during suspension period.

9. Miscellaneous

9.1 Entire Terms.

These Terms, together with all Order Forms and any SOW, sets forth the entire agreement and understanding between the Parties with respect to the subject matter of these Terms and, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter of these terms, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in these Terms or in any Order Form or SOW.

9.2 Independent Contractors.

In making and performing these Terms and any SOW, Customer and BluLogix act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in these Terms and any SOW will be construed or implied to create an agency, partnership or employer and employee relationship between them.

9.3 Notices.

BluLogix may give notice to Customer by means of a general notice through the BluLogix Services interface, electronic mail to Customer's e-mail address on record with BluLogix, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Customer's address on record with BluLogix. Customer may give notice to BluLogix by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service addressed to BluLogix LLC, 1356 Beverly Rd, McLean, VA 22101 Attention: Legal Department. Notice shall be deemed to have been given upon receipt or, if earlier, two business days after mailing, as applicable. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given on receipt or two business days following the date of mailing, if applicable.

9.4 Assignment; Delegation.

Neither these Terms nor any right or obligation hereunder or any SOW may be assigned or otherwise transferred (whether voluntarily, by operation of law or otherwise), without the prior written consent of the other party; provided, however, that either party may, without such consent, assign these Terms and any SOW and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its business or assets related to these Terms, or in the event of its merger, consolidation, change in control or other similar transaction. Any permitted assignee shall assume all obligations of its assignor under these Terms and any applicable SOW. Any purported assignment or transfer in violation of this Section will be null, void and of no effect.

9.5 No Third Party Beneficiaries.

The Parties acknowledge that the covenants set forth in these Terms and any SOW are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any right to enforce any provision of these Terms and any applicable SOW.

9.6 Severability.

If any provision of these Terms or any applicable SOW is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in these Terms or any applicable SOW will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of these Terms or any applicable SOW invalid or unenforceable.

9.7 Waiver.

No waiver under these Terms or any applicable SOW will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

9.8 Force Majeure.

Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of any of its obligations hereunder or under any SOW as a result of circumstances beyond such Party's reasonable control, including, by way of example, war, act of terrorism, riot, fires, strikes, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a breach of these Terms of any applicable SOW. Any Party so prevented or delayed from performance will perform as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than 90 days, the other Party may terminate these Terms and any applicable SOW upon 30 days written notice.

9.9 Nonsolicitation.

During the term of these Terms and for a period of one year thereafter, neither Party will, directly or indirectly, solicit the employment or services of an employee or independent contractor of the other Party without the prior written consent of such Party. Notwithstanding the foregoing, this Section 9.104 shall not: (a) restrict the right of either Party to solicit or recruit generally in the media, or (b) prohibit either Party from hiring an employee of the other Party who answers any advertisement or who otherwise voluntarily applies for hire without having been initially solicited or recruited by the hiring Party.

9.10 Governing Law.

These Terms and any SOW shall be governed and construed in accordance with applicable federal law and the laws of the State of Delaware, without regard to conflicts of laws principles, and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties hereby submit to the jurisdiction of, and waive any venue objections against, the Federal and State Courts of the State of Delaware for any litigation among the Parties hereto arising out of or relating to these Terms and any SOW, or the negotiation, validity or performance of these Terms and any SOW.

9.11 Commencing Legal Action.

An action for breach of these Terms and any SOW or any other action otherwise arising out of these Terms and any SOW must be commenced within one year from the date the right, claim, demand, or cause of action first occurs or be barred forever.

10. Definitions

Certain capitalized terms, not defined above, have the meanings set forth below.

10.1 “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access the BluLogix Services.

10.2 “Activation Date” means the date, set forth in the applicable Order Form, on which the BluLogix Services are scheduled to be made available to Customer.

10.3 “Ancillary Services” means fee-based implementation, training or other consulting services that BluLogix may perform as described in a SOW executed by the parties.

10.4 “Authorized User” means any individual who is an employee of Customer or such other person or entity as may be authorized, by virtue of such individual’s relationship to, or permissions from, Customer, to access the BluLogix Services.

10.5 “BluLogix Services” means the services ordered by Customer through an Order Form and provided by BluLogix by means of access to certain content and use of the features and functionality of software applications available and accessible within the BluLogix Cloud Suite, solely to the extent set forth and further described in, and as limited by, the Order Forms executed by the Parties and as described in the documentation provided with the BluLogix Services.

10.6 “BluLogix Cloud Suite” means Amazon Web Services or other cloud service provider selected from time to time by BluLogix to host the software applications related to the BluLogix Services and in accordance with the Service Level Agreement.

10.7 “Confidential Information” means all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

10.8 “Customer Content” means the data, media and content provided by Customer through the BluLogix Service.

10.9 “Order Form” means the ordering documents, either executed manually or agreed to pursuant to the BluLogix on-line ordering system, identifying a given type of BluLogix Service to be made available by BluLogix pursuant to these Terms. Order forms are incorporated herein.

10.10 “Statement of Work” or “SOW” means a written statement of work entered into and signed by the parties describing Ancillary Services to be provided by BluLogix to Customer.

10.11 “Confirm Invoices” is the act of, within the end of period (EOP) invoice module, selecting a billing cycle to invoice > clicking the “Confirm” button > reconfirming selection > clicking the “Finish” button.

END OF TERMS

Service Level Agreement

Exhibit A

1. Definitions

Capitalized terms, not otherwise defined in this Exhibit A, will have the meanings set forth in the Terms. The following capitalized terms will have the definitions set forth below:

1.1 “System Uptime” will mean the total amount of time during any calendar month, measured in minutes, during which Customer has the ability to access the features and functions of the BluLogix Services.

1.2 “Scheduled Downtime” will mean the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the BluLogix Services, as hosted by BluLogix, due to planned system maintenance performed by BluLogix, as set by communication. BluLogix will exercise reasonable efforts to perform scheduled system maintenance between the hours of 10:00 PM and 7:00 AM Eastern Standard Time.

1.3 “Unscheduled Downtime” will mean the total amount of time during any calendar month, measured in minutes, during which the Customer is not able to access the features and functions of the BluLogix Services as contemplated in the applicable functional list, other than Scheduled Downtime, as defined above.

1.4 “System Availability” will mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the total time during such month, and thereafter dividing the difference so obtained by the total time during such month. Represented algebraically, System Availability for any particular calendar month is determined as follows:

$(\text{Total Monthly Time} - \text{Unscheduled Downtime}) \div \text{Total Monthly Time}$

NOTE: “Total Monthly Time” is deemed to include all minutes in the relevant calendar month, to the extent such minutes are included within the Terms or any Order Form.

2. Customer Requirements

2.1 Customer Obligations.

Customer is responsible for maintenance and management of its computer network(s), servers, software, the Customer Web Site, and any equipment or services related to maintenance and management of the foregoing. Customer is responsible for correctly configuring its systems in accordance with any instructions provided by BluLogix, as may be necessary for provision of access to the features and functions of the BluLogix Services.

2.3 Reporting of Unscheduled Downtime.

Customer must promptly notify BluLogix in the event Unscheduled Downtime occurs. Unscheduled Downtime will be deemed to begin when BluLogix receives accurate notification thereof from Customer, or when BluLogix first becomes aware of such Unscheduled Downtime, whichever occurs first.

2.4 Non-Performance by Customer.

The obligations of BluLogix set forth in this Exhibit will be excused to the extent any failures to meet such obligations result in whole or in part from Customer’s failure to meet the foregoing requirements.

3. Performance

3.1 System Availability.

BluLogix will undertake commercially reasonable measures to ensure that System Availability equals or exceeds 99.6% during each calendar month (the “Service Standard”), provided that any Unscheduled Downtime occurring as a result of (i) non-compliance by Customer with any provision of this Exhibit; (ii) incompatibility of Customer’s equipment or software with the BluLogix Services; (iii) performance of Customer’s systems; or (iv) force majeure, as defined in section 9.8, shall not be considered toward any reduction in System Availability measurements. Service provisioning will be provided in accordance with the Statement of Work.

3.2 Bandwidth Availability.

BluLogix monitors the aggregate packet loss and transmission latency within its LAN and WAN. BluLogix does not monitor the packet loss or transmission latency of specific customers. After discovering or being notified by Customer of packet loss in excess of one-half percent (0.5%), BluLogix will use commercially reasonable efforts to determine the source of such excess packet loss or latency and to correct such problem to the extent that the source of the problem is on the BluLogix network.

3.3 Access to Support; Response Times.

Customer may report Unscheduled Downtime at any time (“24x7x365”) by emailing support@blulogix.com. BluLogix will use commercially reasonable efforts to initiate action on email (ticket) within .5 business hour of each report of Unscheduled Downtime during Business Hours (8:00AM to 8:00 PM Eastern Time, Monday through Friday, excluding BluLogix holidays). During non-Business Hours, BluLogix will use commercially reasonable efforts to initiate remedial activity within 2 hours. Standard help desk hours are M-F 8am to 8pm EST. Extended help desk hours are offered in accordance with the Statement of Work.

3.4 BluLogix Cloud Suite.

BluLogix shall arrange for all applications and related functionality supporting to be hosted and provided through Amazon Web Services or other cloud service provider selected from time to time by BluLogix to host and provide the applications related to the BluLogix Services, provided that any other cloud service provider meets performance speed, capacity, data integrity, and disaster recovery standards at least equal to such standards provided by Amazon Web Services.

4. Recovery

4.1 Data and Disaster Recovery.

In the event of a disaster that impacts the ongoing operation of one or more of the applications supporting the BluLogix Services or a loss of Customer data BluLogix will apply the procedures and protocols set forth in the Data and Disaster Recovery Plan provided upon customer request.

5. Measurement and Reports

5.1 System Monitoring and Measurement.

BluLogix will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated on a monthly basis for each calendar month during the Term.

6. Remedies

6.1 Credits Against Fees.

In the event the System Availability does not satisfy the Service Standard, then Customer will be entitled to credits against its subsequent payment obligations according to the following:

For every 1.0% that the System Availability is less than the Service Standard, a credit of 5% of Customer monthly fee will be credited to Customer account, for a maximum of 50% of Customer monthly fees.

Customer must submit documentation by e-mail to BluLogix with the credit request. Documentation must show details of proof of downtime. These can be in any manner including pings, trace routes, and third-party outage notifications for the past 90 days.

In accordance with Section 6 of the Terms, BluLogix will not be liable for any lost revenues or other damages during down time.

The Customer's rights under this Exhibit are Customer's sole and exclusive remedy with respect to Unscheduled Downtime or failure by BluLogix to meet the Service Standard.

END OF SERVICE LEVEL AGREEMENT