# Terms and Conditions

SIGNING UP FOR ANY BLACKPOINT PROJECT, IT SERVICE OR PURCHASE OF EQUIPMENT, SOFTWARE OR RELATED SERVICE CREATES A CONTRACT BETWEEN YOU AND US, CONSISTING OF THE ORDER, THE APPLICABLE SERVICE DESCRIPTION AND THIS AGREEMENT. ANY ONE OF THE FOLLOWING ACTIONS CONSTITUTES YOUR ACCEPTANCE AND AGREEMENT TO BE BOUND BY THESE TERMS AND CONDITIONS: [1] ACCEPTING THE TERMS AND CONDITIONS ELECTRONICALLY DURING THE ORDERING PROCESS, [2] SIGNING A SUPPORT AGREEMENT OR MAINTENANCE AGREEMENT, [3] ORDERING PRODUCT OR SOFTWARE [4] SIGNING A STATEMENT OF WORK TO PROVIDE SERVICES. THROUGH THESE ACTIONS YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT.

1. **Introduction.** BlackPoint IT Services is an IT Managed Services Company, These Terms and Conditions, together with any operating rules, policies, price schedules, or other supplemental documents expressly incorporated herein by reference and published from time to time (collectively, the “Agreement”), constitutes the entire agreement between BlackPoint IT Services, Inc., a Washington corporation (hereinafter referred to as “we,” “us” or “BlackPoint”) and the party set forth in the related order form or agreement (herein after referred to as “you,” or “Client”) regarding BlackPoint’ s Services (as defined herein), and supersedes all prior agreements, discussions and writings between the parties regarding the subject matter of this Agreement. For purposes of this Agreement, the term “BlackPoint” include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, attorneys and any other service provider that furnishes services to you in connection with this agreement.
2. **Revisions to The Terms and Conditions.** From time to time, we may revise the terms and conditions of this Agreement (including, without limitation, any of the policies incorporated by reference). Notice of revisions to the Agreement or pricing shall be posted on the BlackPoint Website (“the Website”) and deemed given and effective on the date posted to the Website. If you do not agree to the revision(s), you must Terminate your Service immediately, subject to the termination provisions provided in this Agreement. By continuing to use the Service after revision(s) are in effect, you hereby accept and agree to all such revisions.
3. **Taxes.** Client is responsible for, and shall pay are any applicable federal, state, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility and other taxes, fees and charges now in force or enacted in the future, that arise from or as a result of clients service or project with BlackPoint. If client is exempt from payment of such taxes, you will provide BlackPoint with an original government-issued certificate attesting to tax-exempt status.
4. **Payment Terms.** BlackPoint accepts credit card payments when processed within 5 days of invoice date. Credit card payments submitted after 5 days from the due date will be assessed a 3% processing fee. Additionally; payments, including credit cards, which are paid thirty (30) days after the due date will be assessed a 1.5% per month interest charge on unpaid balances or the maximum permitted by law.
5. **Collection.** If we are required to send your account to collections for non-payment you will remain liable to us for all charges under this agreement and all the costs we incur to collect these charges, including, without limitation, collection costs and attorney’s fees. You also agree to pay any additional charges or fees applied to your billing account including but not limited to, interest and charges due to insufficient credit.
6. **Credit Terms.** All Services provided to You and covered by the Agreement shall at all times be subject to credit approval or review by BlackPoint. You will provide such credit information or assurance as is requested at any time. BlackPoint, in its sole discretion and judgment, may discontinue credit at any time without notice or require a deposit.
7. **Price Changes.** BlackPoint may adjust its pricing for Services at any time without prior written notice. Fixed price Agreements for a term commitment will not be subject to the price changes until the end of the term and will automatically renew, unless cancelled, at the new rate and term subscribed in the contract.
8. **Non-Solicitation.** The client agrees not to solicit for employment any BlackPoint employee. It is further agreed that if You do hire an employee or representative of BlackPoint either directly or indirectly within one hundred twenty (120) days of that individual’s termination from BlackPoint, you will pay BlackPoint as liquidated damages the sum of 100% of the annual salary of such individual, which amount you agrees is fair and reasonable and shall survive termination and cancellation of this Agreement.
9. **Management of Your Data and Computers.**
   1. Unless contracted otherwise in a Managed Services Agreement you are solely responsible for maintaining suitable equipment, including your computers, backup systems, servers, printers, firewalls, security, phones and software, including any necessary system or software upgrades, patches or other fixes which are or may become necessary. BlackPoint may make recommendations for upgrading systems, software and applications but it is solely up to the client to act on those recommendations in a timely manner. Contracting BlackPoint on a time and materials basis for projects, monthly engineering visits does not imply we are taking responsibility for your network or infrastructure. Please see section 9b.
   2. BLACKPOINT DOES NOT AUTHORIZE ANYONE, INCLUDING BUT NOT LIMITED TO ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF REGARDING YOUR DATA, BACKUPS, SECURITY OR PHONES REGARDING THE SUITABILITY OF A GIVEN SOLUTION AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. ONLY SIGNED CONTRACTS BETWEEN YOU AND BLACKPOINT WILL HAVE BINDING AUTHORITY.
   3. Unless contracted otherwise in a Managed Backup Agreement you are solely responsible for your backups. This includes ensuring adequate backups are taken before a project starts, ensuring backups are stored securely offsite and the backups are of sound quality and free from corruption. Additionally; BlackPoint makes no warranty to the effectiveness and suitability of a client’s backup system, how long it will take to restore data or how much data can be saved in the event of a data loss event. Please see section 9b.
   4. Unless contracted otherwise in an Advanced Security Agreement you are solely responsible for the security of your network, servers and data. BlackPoint will not be responsible for your security policies, or ensuring your network is configured to reduce the damage of a security breach. In the event of data theft, corruption, encryption client agrees they are solely responsible and any efforts by BlackPoint to help the client is on a best efforts basis and will likely incur emergency charges for quick response. We do not warranty we will be able to recover affected systems or remove all instances of the infection. Please see section 9b.
10. **Warranty/Disclaimer.** When BlackPoint is making recommendations and analyzing your network our knowledge is limited in scope. BlackPoint warrants that services provided will be of good, workmanlike quality, performed with the requisite skill necessary. If a warranty applies, it will be in effect for thirty (30) days, from the date the services are rendered. BlackPoint does not warrant that as a result of monitoring, limited inspection or working on your systems we will identify all potential problems or issues with your network, nor do we warrant that our recommendation will remedy the problems and issues that you are encountering.
11. **Limitations of Liability.** If any service performed by BlackPoint results in damage to your systems or equipment the liability to BlackPoint will be limited solely to the cost to repair or replace (at Our sole and absolute discretion) the damaged systems or equipment. No obligations or liability shall arise out of Our rendering of technical or other advice in connection with services rendered hereunder. Our total liability under this agreement will be limited to the payments received by BlackPoint from the client for that particular service during the three (3) months immediately prior to the date of the event giving rise to any claim or liability. In no event will We be liable for any special, incidental, punitive, exemplary or consequential damages, including, without limitation, lost profits, loss of use, loss of data or loss of goodwill, or the costs of procuring substitute services, arising out of or in connection with this agreement.
12. **Subcontractors.** When deemed necessary, BlackPoint may choose to employ subcontractors both foreign and domestic in the following capacities but not limited to; assisting with system operations and troubleshooting, responding to system alerts, patching, updating, remediation, and technical project assistance. Subcontractors will always operate under the guidance of BlackPoint employees, obtain access to client networks through BlackPoint security credentials and not be permitted to save, copy, transport or otherwise obtain or move client data from client location unless otherwise instructed in writing by the client. Client may at any time request subcontractors both foreign and domestic to be restricted from any access. Restricting access may incur additional fees for service and project delivery and/or may result in degraded service and/or longer project delivery times.
13. **Binding Nature of The Agreement.** This Agreement shall be binding and inure to the benefit of BlackPoint and its successors and assigns and binding upon client and its successors and assigns.
14. **Confidentiality.** BlackPoint and the client mutually agree to consider and hold all matters relating to services performed and the client’s network in strict confidence and shall not disclose same without the prior written consent of the other. Notwithstanding the foregoing, BlackPoint shall be permitted to disclose that it has performed work for the client, including the general nature of the work performed.
15. **Disputes.** Any disputes between the parties less than $5,000 shall be resolved in small claims court in King county, Washington. Any disputes in excess of $5,000 shall be settled by a mutually agreeable dispute resolution provider, through their established procedures, which shall be binding on the parties. If the parties cannot agree on a provider, then the party filing the arbitration proceeding shall be entitled to choose the dispute resolution provider, such as ARC, ADR Services, or JAMS, but not including the American Arbitration Association ("AAA"). Judgment upon the award rendered by the arbitrator(s) may be entered by any court of competent jurisdiction. The costs of arbitration shall be borne equally by the parties with each party responsible for his or its own attorneys' fees. The arbitrator(s) shall have the authority to determine all issues of arbitration. The arbitrator(s) may not award punitive or exemplary damages. The parties hereby waive all rights to such damages and to trial by jury.
16. **No Third-Party Beneficiaries.** If you are not a party to this Agreement, you do not have any remedy, claim, liability, reimbursement, or cause of action. This Agreement does not create any other third-party beneficiary rights.
17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The client consents to jurisdiction of said courts, whether State or Federal.
18. **Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall not affect the validity or enforceability of the remaining portions of this agreement.
19. **Force Majeure.** No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Any Party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.