



## Terms and Conditions

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1. **PARTIES.** \_\_\_\_\_ (“CLIENT”) engages **BlackPoint IT Services** (“BlackPoint”), as an information technology consulting firm, and independent contractor, to provide computer system & software service, support and/or managed services and related services, (“Services”) in accordance with the terms of this agreement. BlackPoint agrees to perform such services in accordance with the scope of work authorized by the CLIENT.
2. **TERM.** This Agreement is effective as of the signed date below and will remain in effect for a one year period. Following the initial term this Agreement shall automatically renew for successive one year terms.
3. **WARRANTY/DISCLAIMER.** BlackPoint is consulting with CLIENT and analyzing CLIENT’s computer system and making recommendations based upon its monitoring and inspection of CLIENT’s system that 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 or limited inspection, they will identify all of the potential problems or issues with CLIENT’s system, nor do they warrant that their recommendation will remedy all problems or issues that CLIENT may encounter.
4. **LIMITATION OF LIABILITY.** If any service performed by BlackPoint results in damage to CLIENT’s systems or equipment, BlackPoint’s liability will be limited solely to the cost to repair or replace (at BlackPoint’s sole and absolute discretion) the damaged systems or equipment. No obligations or liability shall arise out of BlackPoint’s rendering of technical or other advice in connection with services rendered hereunder. BlackPoint recommends CLIENT backup all data on a regular basis and perform backups immediately before any work is done on CLIENT systems. CLIENT and BlackPoint agree that ensuring CLIENT data is backed up is the sole responsibility of CLIENT, and BlackPoint will not be responsible for lost or damaged data unless agreed to under a separate backup or business continuity agreement or addendum. In any event BlackPoint’s total liability under this agreement will be limited to the payments actually received by BlackPoint from 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 BlackPoint 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.
5. **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.
6. **BINDING NATURE OF 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. This Agreement may not be modified except by a written instrument signed by all parties.
7. **TERMINATION.** Either Party may terminate or cancel this agreement with thirty (30) days written notice, section 15 will remain in effect for one (1) year thereafter.
8. **CONFIDENTIALITY.** BlackPoint and CLIENT mutually agree to consider and hold all matters relating to CLIENT’s and BlackPoint’s business 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 CLIENT, including the general nature of the work performed.
9. **DISPUTES.** Any disputes between the parties less than \$5,000 shall be resolved in small claims court within a mutually agreeable county of jurisdiction. 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.

10. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of the local BlackPoint Office. CLIENT consents to jurisdiction of said courts, whether State or Federal.
11. **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.
12. **PRICE CHANGES.** BlackPoint may adjust its pricing for services with thirty (30) days prior written notice. CLIENT will have the option of terminating any projects up to fifteen (15) days prior to the effective date of the price increase.
13. **PAYMENT TERMS.** Payment terms will be determined based on credit application. Large orders of equipment and services may require a deposit payment of 50%. BlackPoint accepts credit card payments when processed within 5 days of invoice date. Credit card payments made after 5 days will be assessed a 2.5% processing fee. Payments, including credit cards, which are paid after the due date will be assessed a 1.5% per month interest charge on unpaid balance or maximum permitted by law.
14. **TAXES.** CLIENT shall pay required federal and state applicable taxes, related to Goods and Services.
15. **NON SOLICITATION.** During the Term of this Agreement and for one (1) year thereafter, CLIENT agrees not to solicit for employment any BlackPoint employee. It is further agreed that if the CLIENT does hire an employee or representative of BlackPoint either directly or indirectly within one hundred twenty (120) days of that individual's termination from BlackPoint, the CLIENT will pay BlackPoint as liquidated damages the sum of 100% of the annual salary of such individual, which amount the CLIENT agrees is fair and reasonable and shall survive termination and cancellation of this Agreement.
16. **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.
17. **ENTIRE AGREEMENT.** This Agreement (including any and all exhibits or attachments hereto) constitutes the complete and exclusive statement of the agreement between parties, which supersedes all prior and concurrent proposals and understandings, whether oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

**Client**

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BlackPoint IT Services**

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_