

Services Terms and Conditions

These SERVICES TERMS AND CONDITIONS ("Terms and Conditions") shall apply each time the Customer engages Blade Network Technologies, Inc. ("BLADE") to provide services ("Services") pursuant to an order or purchase order (collectively "Order") referencing these Terms and Conditions or a Blade Service Quote ("Quote"). "Customer" shall include Customer's corporate parent, subsidiaries and affiliates that are majority owned by Customer, or its parent, or are under voting control of such entities and/or related companies approved by BLADE to receive Services under these Terms and Conditions who purchase Services hereunder and shall include any affiliate of BLADE with whom an order is placed. Customer agrees to the following:

SERVICES

The Services covered by these Terms and Conditions are those services described in an applicable BLADE Services Descriptions ("Service Description"), and Blade will provide all Services pursuant to the Service Description. However, in the event of a conflict between these Terms and Conditions and a Service Description, these Terms and Conditions shall take precedence.

RESALE OF SERVICES

If Customer is a BLADE-authorized reseller of Services, then BLADE will provide Services to the reseller's end customer as a subcontractor and under the same terms and conditions BLADE generally provides such Services to its own end customers. Reseller shall provide to its end customer its own service agreement that contains the same provisions regarding service delivery and liability as in the BLADE Core Services Descriptions and the same provisions governing the use of Software as in the Services Software License Agreement, both located at http://www.bladenetwork.net/pages/support_policies.html.

REQUESTS FOR SERVICE; QUOTES AND ORDERS

All Orders for Services must specify BLADE's quotation (if any), and reference the Service(s) requested and invoice address. Customer may place Orders in writing, or by facsimile transmission. All Orders are subject to acceptance by BLADE. If Customer orders on-line, BLADE may issue to Customer user names and passwords (the "Purchase Codes"). By accepting and using the Purchase Codes, Customer acknowledges the validity of an electronic order, which shall be deemed to be in writing for all purposes hereunder, and agrees to be responsible for full payment of any Services, ordered using Customer's Purchase Codes. Customer is responsible for keeping the Purchase Codes confidential and controlling their use.

PURCHASES BY AFFILIATES

Unless otherwise agreed in writing, any Affiliate who submits an Order to BLADE shall have thereby agreed to abide by these Terms and Conditions. BLADE, in its sole discretion, may discontinue selling Services to any Affiliate or may require additional payment and/or credit conditions for such Affiliate.

AFFILIATE GUARANTY

Subject to the provisions above regarding "Purchases by Affiliates," in consideration of BLADE's agreement to extend credit to Customer's Affiliates at the same or similar level as the credit extended to Customer, Customer hereby unconditionally guarantees complete and timely payment of any and all amounts due to BLADE from any Affiliate.

PRICES

Prices charged for Services purchased under or in reference to the Quote shall be BLADE's as specified in the Quote. If the Services are being performed on a time and materials basis, any estimates provided by BLADE are for planning purposes only. Any required deposits are non-refundable.

ADDITIONAL FEES; TAXES

Prices are exclusive of all country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes. Taxes imposed on BLADE (other than taxes related to BLADE's income) in connection with the Services will be paid by Customer and will appear as separate items on BLADE's invoices or may be on a separate invoice sent by BLADE to Customer at a later point in time.

CHANGING/CANCELLING ONSITE SERVICE DATE(S)

Any Services performed at Customer's premises ("onsite service") will be performed during BLADE's regular working hours. BLADE will perform Services based on a schedule mutually agreed upon between BLADE and Customer. For any change in date or cancellation by Customer to a scheduled BLADE onsite service date made less than ten (10) business days of the schedule date, Blade may assess a cancellation fee or change fee of \$5,000 in addition to any travel related fees and penalties.

INVOICING AND PAYMENT

Customer's payment is due at the point of purchase in the case of credit card payments. Subject to initial and continuing credit approval by BLADE, payment terms of net thirty (30) days from the date of invoice may be extended. In any event, payments shall be due no later than thirty (30) days from the date of invoice. Customer will pay BLADE in US dollars. Additional charges may apply if Customer requests services that are performed outside contracted hours or are beyond the normal coverage for the particular service. For invoices not paid within thirty (30) days of the invoice date, BLADE reserves the right to charge Customer a late penalty charge of one and a half percent (1.5%) per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. In addition, BLADE may, without waiving any other rights or remedies to which it may be entitled, decide not to accept additional orders from Customer and/or seek collection of all amounts due, including reasonable legal fees and costs of collection.

DEFINITIONS

"Software" is any software, including BladeHarmony™ Manager, bug fix, Update, Upgrade, feature, enhancement delivered or enabled under this Agreement, irrespective of the mode of delivery.

"Updates" means (a) maintenance releases (no new functions or enhancements) with multiple bug fixes that are rolled up into one release and (b) patches (a.k.a., single-point-solution or one-off) – single bug fixes for specific customers.

"Upgrades" means releases that have new features and/or functions and which have undergone full SQA cycle and regression testing; "Major Upgrade" means many new features/functions are included in such a release and "Minor Upgrade" means one to two features/functions are included.

TERM

These Terms and Conditions shall remain in effect for the time period specified in the applicable Order.

RENEWAL OR REINSTATEMENT

If Customer chooses to renew or reinstate any lapsed Service subject to these Terms and Conditions, which includes Upgrades, then Customer, at its her sole discretion, may renew such Service at the same rate per device as defined in the initial Order or agreement, adjusted for any increases in costs. If a prior agreement for Service or warranty period has lapsed, then any renewed or reinstated Service pursuant to these Term and Conditions must be paid covering the period from the day after the termination or expiration. For example: if a 3-year Services agreement expired on 12/31/2010 and the Customer decides to renew on 6/1/2011 for another 3-year period; then the renewal period will begin on 1/1/2011 and end on 12/31/2013, and the Customer must pay the offered 3-year renewal rate.

THIRD PARTY PRODUCTS, THIRD PARTY SERVICES, SOFTWARE INSTALLATION

1. **Third Party Products.** "Third Party Products" means any hardware or software, other than parts that are BLADE branded and originally listed on BLADE's standard parts list. Third Party Products and/or Third Party Services may be provided by Customer or procured for Customer by BLADE, as described by the applicable Service Description. In the event the Third Party Products procured by BLADE are not used for the Services within a reasonable time following purchase of the parts by BLADE, the Third Party Products will be shipped and invoiced to Customer and Customer will pay for these parts within thirty (30) days after the date of invoice.
2. **Third Party Warranties.** BLADE is not responsible for any revision or engineering changes in any Third Party Products or Third Party Services. Some manufacturers' warranties or service contract terms and conditions may become void if BLADE or anyone else, other than the manufacturer or its authorized representative, works on the hardware or software. BLADE DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE BLADE SERVICES MAY HAVE ON THOSE WARRANTIES.
3. **Third Party Services.** Except as agreed to in writing between Customer and BLADE, Third Party Services shall be exclusively subject to terms and conditions between the third party and Customer.
4. **Software Installation.** For software provided by Customer, Customer authorizes BLADE (or otherwise obtain the rights for BLADE) to copy, install and modify, if necessary, all software to be used in the Services or to be recorded in electronic media for subsequent re-installation of backup.
5. Customer warrants to BLADE that it has obtained any licenses, consents, or approvals required to give BLADE and its subcontractors or employees the right or license to access, copy, distribute, use and/or modify (including creating derivative works) any Third Party Products to be used in the Services without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such Third Party Products.

PROPRIETARY RIGHTS

BLADE will retain exclusive ownership in all deliverables created by BLADE hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by BLADE in performance of Services. Subject to payment in full for the applicable Services, BLADE grants Customer a non-exclusive, non-transferable right to use the deliverables solely in the country(ies) in which Customer does business and solely for Customer's internal use. BLADE's end-user license agreement continues to apply if Services include Software Upgrades or Updates.

EXPORT; REGULATORY REQUIREMENTS

1. **Export.** Customer warrants that any software provided by Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide BLADE with all of the information needed for BLADE to obtain export licenses from the United States government and to provide BLADE with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. BLADE may also require export certifications from Customer for Customer provided software. BLADE's acceptance of any order for Services is contingent upon the issuance of any applicable export license required by the United States Government; BLADE is not liable for delays or failure to deliver a product resulting from Customer's failure to obtain such license or to provide such certification.
2. **Regulatory Requirements.** BLADE shall not be under any obligation to perform any Service Description, install any Third Party Products as part of the Services, or proceed with Services if such Third Party Products, or the resulting software, do not satisfy the local regulatory requirements of the country to which the Products are to be shipped.

CUSTOMER RESPONSIBILITIES

Customer is responsible for backing up data on Customer's system. BLADE WILL NOT BE RESPONSIBLE FOR LOSS OF OR DAMAGE TO DATA OR LOSS OF USE OF ANY COMPUTER OR NETWORK SYSTEMS. BLADE's performance and delivery of the Services are contingent upon: (a) Customer providing access to its personnel, facilities, equipment, hardware, software, network and information; (b) Customer making available to BLADE a qualified employee who is familiar with the work BLADE is undertaking;

and (c) Customer's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. Customer will promptly obtain and provide to BLADE any required consents necessary for BLADE's performance of the Services described in the applicable Service Description. Information disclosed by Customer pursuant to a separate Nondisclosure Agreement ("NDA") signed by both parties will be protected under the terms of the NDA. Any information or data disclosed or sent to BLADE that is not protected under a separate NDA is not confidential or proprietary to Customer.

SOFTWARE LICENSE AND COMPLIANCE

Customer's use of Software is subject to the software license agreement as detailed in BLADE's Services Software License Agreement. Customer is licensed to use downloaded Premium Software only on hardware registered to receive support. BLADE or its authorized representative shall have the right to audit the use of Software on Customer's premises during normal business hours upon 2 business days advance notice ("Compliance Rights"). Such Compliance Rights may be exercised by BLADE at its sole discretion. If Software is found to be used without proper authorization by Customer, then the applicable Order for the Service shall be expanded automatically to include all devices in use by Customer, and Customer will be liable to pay to BLADE the then-current Premium List End User Price (without any discounts) for each device in excess of the devices defined in the Order, and Customer shall be responsible for the payment of all costs associated with such audit.

LIMITATION OF SERVICES

Except as stated below, when Services consist of repair of BLADE systems, such Services shall be those repair services that are necessary because of any existing defect or a defect occurring in materials or workmanship in the system or in any system component. Preventive maintenance is not included unless mentioned in the Service Description. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than BLADE (or its representatives) are not included. Unless otherwise provided in the Service Description, Services do not include repair of any system or system component which has been damaged as a result of (a) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than BLADE (or its representatives); (b) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes; or (c) the moving of the system from one geographic location to another or from one entity to another.

LIMITED WARRANTY & LIMITATION OF LIABILITY

1. **Limited Warranty.** BLADE WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, BLADE MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY RELATING TO THIRD PARTY PRODUCTS, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING THE SERVICES, ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION BLADE MAY MAKE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES CONCERNING THE PERFORMANCE, MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE DELIVERABLES OR OF ANY SYSTEM THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION BLADE MAY PROVIDE.
2. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY BLADE EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS THAT THE SERVICES CAUSED BODILY INJURY (INCLUDING DEATH), BLADE'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY EVENT OR SERIES OF CONNECTED EVENTS OCCURRING IN CONNECTION WITH THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM, SHALL NOT EXCEED THE AMOUNT OF FEES PAID UNDER THE APPLICABLE ORDER FOR THE SPECIFIC SERVICE GIVING RISE TO THE CLAIM DURING THE PRIOR CALENDAR YEAR LEADING UP TO THE EVENT GIVING RISE TO THE CLAIM.
3. **High Risk Activities.** BLADE has not tested or certified its products or Services for use in high risk applications including medical life support, nuclear power, mass and air transportation control or any other potentially life critical uses and makes no assurances that the products or Services are suitable for any high risk uses.

INDEMNIFICATION

Customer accepts responsibility for and agrees to indemnify and hold BLADE harmless from any and all liability, damages, claims or proceedings arising out of (a) the failure of Customer to obtain the appropriate license, intellectual property rights, or any other permissions required to support any Service Description or BLADE's performance of the Services, including, but not limited to, the right to make any copies or reproductions of any Customer provided software or (b) any inaccurate representations regarding the existence of an export license or the eligibility for export of software or other materials without a license.

SUBCONTRACTING

Unless otherwise agreed, Services will ordinarily be performed by a BLADE service representative or other BLADE authorized representative. However, BLADE reserves the right to subcontract the Services provided.

COMPLETENESS; SEVERABILITY

These Terms and Conditions, with respect to its subject matter, supersedes all prior oral and written understandings, communications or agreements between BLADE and Customer. No amendment to or modification to these Terms and Conditions, in whole or part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of these Terms and Conditions is void or unenforceable, the remainder of these Terms and Conditions will remain in full force and will not be terminated.

FORCE MAJEURE

Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under these Terms and Conditions during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure events last longer than thirty (30) days, the other party may immediately terminate the applicable Order by giving written notice to the delayed party.

NOTICES

To give notice under these Terms and Conditions, the notice must be in writing and sent by postage prepaid first class mail, receipted courier service, facsimile telecommunication or electronic mail to the address which appears below in the case of Blade or to the address on the applicable Order in the case of Customer.

GOVERNING LAW, JURISDICTION AND LANGUAGE

The construction and performance of these Terms and Conditions shall be governed by the laws of the State of California. These Terms and Conditions will be interpreted and construed in accordance with the English language.

DISPUTE RESOLUTION

Customer agrees to attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against BLADE, its agents, employees, successors, assigns, or affiliates arising out of or relating to these Terms and Conditions, the applicable Order, BLADE's advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.

LIMITATION PERIOD

Neither party may institute any action in any form arising out of these Terms and Conditions more than two (2) years after the cause of action has arisen, or in the case of nonpayment, more than two (2) years from the date of last payment.

Blade Network Technologies, Inc. Contact:

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