

## ***Terms of BluWave Services***

THIS IS AN AGREEMENT BETWEEN YOU OR THE ENTITY THAT YOU REPRESENT (hereinafter "You" or "Your") AND BluWave Software CC (hereinafter "BluWave" or "we" or "Us") GOVERNING YOUR ACQUISITION AND USE OF BLUWAVE SOFTWARE APPLICATIONS AND ANY ASSOCIATED PROGRAMS OR BLUWAVE SERVICES (hereinafter "BluWave Service(s)"). If you register for a trial service then this agreement also governs your use or acquisition of that service.

You can accept the terms of this agreement either by clicking on an "Accepted" check box on our web site or by submitting an order on our order form with the Terms Accepted box ticked.

### **1. Confirmation of Legal Authorisation**

If you represent an organisation or entity then by accepting these terms you are confirming that you are authorised to bind the organisation or entity to these terms. You are also confirming that you are over 18 years of age.

### **2. Description of BluWave Service**

BluWave is in the Customer Relationship Management (CRM) software industry and develops and markets software and also provides training and support and consultancy on software products.

BluWave develops, markets and supports software programs or Services ("BluWave Service" or "BluWave Services"). You may use the BluWave Services for your personal and business use or for internal business purpose in the organisation that you represent. You may connect to the BluWave Services using any Internet browser supported by the BluWave Services. You are responsible for obtaining access to the Internet and the equipment necessary to use the BluWave Services.

### **3. Bluwave responsibilities include:**

- a. To provide basic support via our telephone support line or email at no additional charge and/or extended support service if purchased separately.
- b. To make all commercially reasonable efforts to make the Bluwave services available 24 hours a day 7 days a week except for:
  - Downtime scheduled for planned maintenance. We will give 8 hours notice of this planned downtime.
  - Any system downtime due to events beyond our control such as but not limited to:

acts of god, floods, fires, earthquakes, civil unrest, acts of terror, labour strikes of other parties, internet service provider failures.

c. To Protect Your Data

We respect your right to ownership of data created or stored by you. You own the data created or stored by you. Unless specifically permitted by you, your use of the BluWave Services does not grant BluWave the license to use, reproduce, adapt, modify, publish or distribute the content created by you or stored in your user account for BluWave's commercial, marketing or any similar purpose. But you grant BluWave permission to access, copy, distribute, store, transmit, reformat, publicly display and publicly perform the content of your user account solely as required for the purpose of providing the BluWave Services to you.

d. To Protect your Personal Information and Privacy

BluWave shall take all reasonable steps to protect the personal information of users. For the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA).

The PAIA may be downloaded from:

<http://www.info.gov.za/view/DownloadFileAction?id=68186>

Personal information you provide to BluWave through the Service is governed by [BluWave Privacy Policy](#). Your election to use the Service indicates your acceptance of the terms of the [BluWave Privacy Policy](#). You are responsible for maintaining confidentiality of your username, password and other sensitive information. You are responsible for all activities that occur in your user account and you agree to inform us immediately of any unauthorized use of your user account by email to or by calling us on any of the numbers listed on <http://www.BluWave.com/contact.html>. We are not responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your user account, or otherwise.

**4. Your responsibilities include:**

a. Control Access to the Service

In addition to all other terms and conditions of this Agreement, you shall

- To make all commercially reasonable efforts to prevent unauthorised access to or use of the Bluwave Services.
- Be responsible for your users compliance with this agreement.

You shall not:

- transfer or otherwise make available to any third party the BluWave Services;
- provide any service based on the BluWave Services without prior written permission;

#### b. Spamming and Illegal Activities

You agree to be solely responsible for the contents of your transmissions through the BluWave Services. You agree not to use the BluWave Services for illegal purposes or for the transmission or storage of data or material that is unlawful, defamatory, harassing, libelous, invasive of another's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, or is otherwise objectionable, offends religious sentiments, promotes racism, contains viruses, or that which infringes or may infringe intellectual property or other rights of another. You agree not to use the BluWave Services for the transmission of "junk mail", "spam", "chain letters", "phishing" or unsolicited mass distribution of email. We reserve the right to terminate your access to the BluWave Services if there are reasonable grounds to believe that you have used the BluWave Services for any illegal or unauthorised activity.

#### c. User Sign up Obligations

You need to sign up for a user account by providing all required information in order to access or use the BluWave Services. If you represent an organisation and wish to use the BluWave Services for corporate internal use, we recommend that you, and all other users from your organisation, sign up for user accounts by providing your corporate contact information. In particular, we recommend that you use your corporate email address. You agree to: a) provide true, accurate, current and complete information about yourself as prompted by the sign up process; and b) maintain and promptly update the information provided during sign up to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if BluWave has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, BluWave may terminate your user account and refuse current or future use of any or all of the BluWave Services.

### **5. Delivery Policy**

Upon successful payment and signup you will be issued with a user name and password. Thereafter you will be granted access to the BluWave Services.

### **6. Modification of Terms of Service**

We may modify the Terms upon notice to you at any time. You will be provided notice of any such modification by electronic mail and by publishing the changes on the website [www.BluWave.co.za](http://www.BluWave.co.za). You may terminate your use of the BluWave Services if the Terms are modified in a manner that substantially affects your rights in connection with use of the BluWave Services. Your continued use of the Service after notice of

any change to the Terms will be deemed to be your agreement to the amended Terms.

## **7. Communications from BluWave**

The Service may include certain communications from BluWave, such as service announcements, administrative messages and newsletters. You understand that these communications shall be considered part of using the BluWave Services.

## **8. Fees And Payment For Services**

### **Payment options accepted**

You will provide us with valid and updated credit card information, or with a debit order authorisation or alternative document reasonably acceptable to Us. Credit card payments may be made via Visa or MasterCard into the BluWave bank account, the details of which will be provided on request.

### **Credit card acquiring and security**

Credit card transactions will be acquired for BluWave via PayGate (Pty) Ltd who are the approved payment gateway for Standard Bank of South Africa. PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no credit card details are stored on the website. Users may go to [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy.

### **Customer details separate from card details**

Customer details will be stored by BluWave separately from card details which are entered by the client on PayGate's secure site. For more detail on PayGate refer to [www.paygate.co.za](http://www.paygate.co.za)

### **Merchant Outlet country and transaction currency**

The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. Transaction Currency is South African Rand (ZAR).

### **Responsibility**

BluWave takes responsibility for all aspects relating to the transaction including sale of goods and BluWave Services sold on this website, customer service and support, dispute resolution and delivery of BluWave Services.

## **Invoicing and Payment**

If You provide credit card information to Us or a debit order authorisation, You authorise Us to charge such credit card or bank account for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s). Such charges shall be made in advance, either monthly or annually or in accordance with any invoicing frequency stated in the applicable Order Form. You are responsible for providing complete and accurate invoice and contact information to Us and notifying Us of any changes to such information.

## **Fees**

You shall pay all fees specified in all Order Forms submitted to BluWave. Except as otherwise specified herein or in an Order Form,

- fees are based on services purchased and not actual usage,
- payment obligations are non-cancellable and fees paid are non-refundable,
- the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form.
- User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.
- Your subscription will be automatically renewed at the end of each subscription term unless you inform us that you do not wish to renew the subscription.
- The subscription fee will be charged to the Credit Card last used by you if paying by credit card or to the bank account last used if paying by debit order. If you would like the payment for the renewal to be made through a different Credit Card or bank account or if you do not wish to renew the subscription, you agree to inform us at least seven days prior to the renewal date.
- BluWave reserves the right to change the subscription fee and to charge for use of BluWave Services that are currently available free of charge. You will not be charged for using any BluWave Service unless you have opted for a paid subscription plan.

**Overdue Charges**

If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified on the order form.

**Suspension of Service and Acceleration**

If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue, before suspending services to You.

**Payment Disputes**

We shall not exercise Our rights under the section called (Overdue Charges) or the section called (Suspension of Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**9. Reservation of Rights in Services**

Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**User Suggestions**

We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services

## **10. Inactive User Accounts Policy**

We reserve the right to terminate unpaid user accounts that are inactive for a continuous period of 60 days. In the event of such termination, all data associated with such user account will be deleted. Please see the paragraph below "Return of your Data" relating to your rights to request a copy of your data. We will provide you 7 days prior notice of such deletion of your data by email. The data deletion policy may be implemented with respect to any or all of the BluWave Services. Each Service will be considered an independent and separate service for the purpose of calculating the period of inactivity. In other words, activity in one of the BluWave Services is not sufficient to keep your user account in another Service active. In case of accounts with more than one user, if at least one of the users is active, the account will not be considered inactive.

## **11. Return of your Data**

Upon request by You made within 30 days after the effective date of termination of a BluWave Service, we will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

## **12. Data Ownership**

We respect your right to ownership of content created or stored by you. You own the content created or stored by you. Unless specifically permitted by you, your use of the Services does not grant BluWave the license to use, reproduce, adapt, modify, publish or distribute the content created by you or stored in your user account for BluWave's commercial, marketing or any similar purpose. But you grant BluWave permission to access, copy, distribute, store, transmit, reformat, publicly display and publicly perform the content of your user account solely as required for the purpose of providing the Services to you.

## **13. Sample files and Applications**

BluWave may provide sample files and applications for the purpose of demonstrating the possibility of using the BluWave Services effectively for specific purposes. The information contained in any such sample files and applications consists of random data. BluWave makes no warranty, either express or implied, as to the accuracy, usefulness, completeness or reliability of the information or the sample files and

applications. The rules in in this document apply both to the Trial and Purchased versions of BluWave Services

#### **14. Trademark**

BluWave CRM, BluWave, BluWave logo, the names of individual BluWave Services and their logos are trademarks of BLUWAVE CC. You agree not to display or use, in any manner, the BluWave trademarks, without BluWave's prior permission.

#### **15. Disclaimer of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE BLUWAVE SERVICES IS AT YOUR SOLE RISK. THE BLUWAVE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. BLUWAVE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BLUWAVE MAKES NO WARRANTY THAT THE BLUWAVE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS FREE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE BLUWAVE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM THE USE OF THE BLUWAVE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM BLUWAVE, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

#### **16. Limitation of Liability**

YOU AGREE THAT BLUWAVE SHALL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF BLUWAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BLUWAVE RELATED TO ANY OF THE BLUWAVE SERVICES SHALL BE TERMINATION OF SUCH SERVICE. IN NO EVENT SHALL BLUWAVE'S ENTIRE LIABILITY TO YOU IN RESPECT OF ANY SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES PAID BY YOU TOWARDS SUCH SERVICE.



## **17. Indemnification**

You agree to indemnify and hold harmless BluWave, its officers, directors, employees, suppliers, and affiliates, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims that you have used the BluWave Services in violation of another party's rights, in violation of any law, in violations of any provisions of the Terms, or any other claim related to your use of the BluWave Services, except where such use is authorized by BluWave.

## **18. Country of domicile**

This website is governed by the laws of South Africa and BluWave chooses as its domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature. Address: 18 Curzon Road Bryanston, Gauteng, South Africa

## **19. Company information**

This website is run by BluWave Software CC based in South Africa and with registration number 2010/073825/23 The Members are: B D Cooke-Tonnesen, T C Cooke-Tonnesen, S Lowe.

## **20. Arbitration**

Any controversy or claim arising out of or relating to the Terms shall be settled by binding arbitration in accordance with the commercial arbitration rules of the South African Law Society. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The decision of the arbitrator shall be final and unappealable. The arbitration shall be conducted in Gauteng, South Africa and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Notwithstanding anything to the contrary, BluWave may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction.

## **21. Suspension and Termination**

We may suspend your user account or temporarily disable access to whole or part of any Service in the event of any suspected illegal activity, extended periods of inactivity or requests by law enforcement or other government agencies. Objections to suspension or disabling of user accounts should be made to within thirty days of being notified about the suspension. We may terminate a suspended or disabled user

account after thirty days. We will also terminate your user account on your request. In addition, we reserve the right to terminate your user account and deny the BluWave Services upon reasonable belief that you have violated the Terms. Termination of user account will include denial of access to all BluWave Services, deletion of information in your user account such as your e-mail address and password and deletion of all data in your user account.

## **22. Miscellaneous**

This Agreement, including any and all documents referenced herein, constitute the entire agreement between the parties. Any previous representations, understandings, statements, facts etc which are not recorded in this Contract shall be of no force or effect between the parties. *BluWave's* failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provisions or right. If any of the provisions contained in this Agreement were determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions contained herein. This Agreement shall be governed by and construed in accordance with the prevailing laws of South Africa

## **23. Contact Details**

### **BluWave contact details:**

Support : [support@bluwave.co.za](mailto:support@bluwave.co.za)

Tel : 27 11 462-6871

## **END OF TERMS OF SERVICE**

If you have any questions or concerns regarding this agreement, please contact us at [support@bluwave.co.za](mailto:support@bluwave.co.za)

Last updated on: 28 February, 2015.