

**BLUSPARK GROUP**  
**SERVICES TERMS AND CONDITIONS**  
**(Effective: [DATE])**

These Services Terms and Conditions (these “Service Terms”), by and between Bluspark Global, LLC and its subsidiaries and affiliates (collectively, as applicable “Bluspark”) and the customer entity (“Customer”) identified in the Agreement (as defined below), is effective as of the Effective Date of the Agreement in which these Service Terms are referenced and incorporated. Bluspark and the Customer are each referred to herein individually as a “Party”, and collectively as the “Parties”.

**RECITALS**

WHEREAS, the Customer and Bluspark desire to enter into an agreement for the purchase of certain technology and/or consulting services provided by Bluspark, as more fully defined in an applicable Proposal Document;

WHEREAS, Bluspark is in the business of providing technology and consulting services to its customers within the logistics industry;

NOW THEREFORE, in consideration of the premises and the respective mutual agreements, covenants, representations and warranties contained in the Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions.**

- 1.1. “Addendums” means collectively, the Consulting Services Addendum and the Technology Services Addendum.
- 1.2. “Affiliate” means an organization that is directly owned, controlled, or is under common ownership or control of a party.
- 1.3. “Agreement” means the short-form agreement executed by the Parties that incorporates by reference the Company’s applicable terms and conditions, policies, service descriptions, and other supplemental documents, including these Service Terms and the Addendums.
- 1.4. “Authorized User” means Customer’s and Customer Affiliate’s employees, consultants, and authorized contractors.
- 1.5. “Consulting Services” means the professional advisory, development, analysis, planning, and implementation services provided by Bluspark in the logistics and supply chain sector, including without limitation, assessments, process optimization, strategy development, compliance guidance, technology integration, technology development, training and other related consulting services performed for Customer under this Agreement.
- 1.6. “Consulting Services Addendum” means the supplemental document incorporated by reference into the Agreement between the Parties that sets forth additional terms applicable to the Consulting Services purchased by the Customer. In the event of a conflict between the terms of the Consulting Services Addendum and these Service Terms or the Agreement, the terms of the Consulting Services Addendum shall control solely with respect to the subject matter of the Consulting Services Addendum.

- 1.7. “Customer Materials” means any data, materials, items, or information supplied or made available to Bluspark under this Agreement or pursuant to any Services provided to Customer.
- 1.8. “Deliverable” means any item, material, Documentation, report, analysis, design, model, data configuration, template, draft, prototype, or other output that Bluspark provides to Customer pursuant to an applicable Proposal Document whether in tangible or intangible form.
- 1.9. “Documentation” means the documentation, technical product specifications and/or user manuals, published by Bluspark that is made available to Customer about the Services.
- 1.10. “Proposal Document” means the Quote, SOW, or other document describing the Services to be performed or delivered by Bluspark to Customer.
- 1.11. “Purchase Order” means the purchase order placed by Customer for the Purchase of Services pursuant to this Agreement and shall incorporate the terms and specifications of any corresponding Proposal Document.
- 1.12. “Quote” means the quoting document provided by Bluspark to Customer detailing the proposed pricing, timing, and other terms and conditions of the proposal for the provision of Services to Customer.
- 1.13. “SOW” means the scope of work, describing and documenting the Services to be performed by Bluspark.
- 1.14. “Technology Services” means the software, software-as-a-service (SaaS) offerings, analytics tools, platforms, application programming interfaces (API’s), and related implementation, maintenance, support, and other services that Bluspark makes available to Customer under this Agreement.
- 1.15. “Technology Services Addendum” means the supplemental document incorporated by reference into the Agreement between the Parties that sets forth additional terms applicable to the Technology Services purchased by the Customer. In the event of a conflict between the terms of the Technology Services Addendum and these Service Terms or the Agreement, the terms of the Technology Services Addendum shall control solely with respect to the subject matter of the Technology Services Addendum.
- 1.16. “Services” means, collectively the Consulting Services and Technology Services.
- 1.17. “Service Terms” means these Services Terms and Conditions, the applicable Addendums, any Proposal Documents and any documents incorporated expressly therein by reference.

## 2. Services.

- 2.1. **Provision of Services.** Bluspark will provide Services, as more fully described in an applicable Proposal Document to the Customer. Any Services purchased by the Customer from Bluspark shall be subject to the terms and conditions of these Service Terms. Bluspark shall provide the Services in a professional and workmanlike manner.
- 2.2. **Purchase Order.** Bluspark will provide a Proposal Document describing the Services, including applicable pricing to the Customer upon request. Once executed by the Customer and

Bluspark, the executed Proposal Document shall constitute a valid Purchase Order for the Services described in the Proposal Document.

- 2.3. Purchase Order Terms.** Any terms, conditions, or provisions found on a purchase order issued by the Customer shall have no force and effect unless approved by Bluspark's legal counsel and executed in writing by Bluspark. Customer agrees that each issuance of a Purchase Order shall constitute a new and separate agreement incorporating the terms of this Agreement and any applicable Addendums. Upon acceptance, Bluspark shall furnish to Customer the Services set forth in the Purchase Order. Customer must provide information sufficient for Bluspark to deliver the Services.
- 2.4. Change Orders.** Modifications to the Services shall be agreed to in writing by the Parties. These provisions shall not limit Bluspark's ability to make changes or improvements to its Services in the ordinary course of development.
- 2.5. Individual Procurement.** The Customer acknowledges that Services are being procured separately from any other products or services offered by Bluspark. Customer obligations for any one of Bluspark's Services, whether the Consulting Services, Technology Services, or other services made available by Bluspark or its Affiliates, are not contingent upon the procurement or use of any other services offered by Bluspark.
- 2.6. Future Functionality.** The Customer agrees that the purchase of Services is not contingent upon the delivery of any future functionality or features (including the availability of any products or services offered by Bluspark beyond the Term, as defined below), or dependent on any oral or written public comments made by Bluspark regarding future functionality or features.
- 2.7. Customer Cooperation.** Customer understands and agrees that the delivery of the Services by Bluspark to Customer is contingent upon Customer providing timely access to information, personnel, and other resources reasonably required by Bluspark. Bluspark shall not be responsible for any harm, claim, or liability resulting from Customer not providing adequate information, personnel, or other resources reasonably required by Bluspark to deliver the Services.

### **3. Term and Termination; Effects of Termination.**

- 3.1. Term.** The term of a Purchase Order shall be provided for in the Purchase Order and begin on the later of: (a) the date Bluspark accepts the Purchase Order, or (b) the effective date provided for on a Purchase Order (the "Initial Term"). Notwithstanding the foregoing, the term of a Purchase Order shall renew annually for successive one-year terms, unless a Party delivers written notice of non-renewal not less than sixty (60) days prior to the expiration of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"). Any licenses for Services granted to the Customer shall immediately terminate upon the expiration of the Term.
- 3.2. Termination.** Unless otherwise provided in writing, the Services shall be non-cancellable and may not be terminated by either party during the Term, except in the case of (i) a material breach by the other Party which remains uncured for more than thirty (30) days following receipt of written notice of the breach, or (ii) the other Party becomes insolvent or becomes the subject of proceedings relating to bankruptcy or the relief of creditors of that Party.

**3.2.1. Effects of Termination.**

**3.2.2.** Upon the expiration or termination of the Term of the applicable Purchase Order, Customer agrees to immediately cease all use of the Services and return all Documentation and delete all backup copies thereof. All rights, licenses, authorizations, and access granted to the Services will immediately terminate and Customer shall no longer have access to such Services.

**3.2.3.** Bluspark shall provide access to Customer Materials to Customer for a period of thirty (30) days prior to the deletion of data from Bluspark's systems. Customer shall notify Bluspark of any non-standard data archive requests or sanitation procedures for Customer Materials prior to return to Customer. Bluspark will provide estimated charges to transfer said Customer Materials to Customer's preferred media outside of Bluspark's standard operating procedures. Bluspark will send an invoice and require payment in full prior to Bluspark beginning any non-standard transfer procedure. Once received, Customer shall review the returned Customer Materials and confirm receipt and approval within five (5) days of such receipt. Absent such confirmation, the Customer Materials shall be presumed to be complete and in compliance with Customer requirements following such five (5) day period.

**3.2.4.** Upon any termination of this Agreement by Bluspark pursuant to Section 3.2 above, the fees for Services due for the remainder of the Term, along with all other amounts then due and owing by the Customer, shall accelerate and become immediately due and payable.

**4. Fees; Payments.**

**4.1. General.** The amount of fees payable by Customer for the Services shall be as set forth in the Purchase Order.

**4.2. Payment Terms.** Unless otherwise agreed to in writing, all fees for Services shall be paid within fifteen (15) days of Customer's receipt of an invoice for such Services.

**4.3. Late Fees.** Any amounts due but unpaid shall be incur a monthly fee equal to the lesser of: (i) 1.5% of all due but unpaid amounts; or (ii) the maximum amount allowed by applicable law ("Late Fees"). Late Fees shall be added to the following month's invoice.

**4.4. Collection Fees.** If Customer becomes more than sixty (60) days past due on a payment owed to Bluspark, Bluspark may submit such invoice to a collections agency, and Bluspark shall be entitled to any and all recovery costs related to such action, including, but not limited to, collection cost fees, court fees, attorneys fees, late fees, and interest.

**4.5. Acceleration.** Any fees that more than sixty (60) days past due will be considered delinquent. Bluspark may suspend the provision of Services to any Customers who are delinquent. If a Customer becomes delinquent, the entire remaining amount of fees for Services payable to Bluspark during the Term shall accelerate and become immediately due and payable to Bluspark.

**4.6. Price Changes.** Prices for Services shall remain as provided in the applicable Purchase Order. Upon the effective date of each Renewal Period, the fees for Services provided shall increase by an amount equal to [three percent (3%)].

## 5. Intellectual Property.

- 5.1. **Reservation of Rights.** Bluspark and its licensors own all intellectual property related to the Services, and all derivatives derived from the Services. All intellectual property rights with respect to the Services and Bluspark's name and trademarks, whether now existing or which may hereafter come into existence, which are not expressly granted to Customer, are reserved to Bluspark and its licensors. Any goodwill generated through Customer's use of Bluspark's Services, name and trademarks shall inure solely to the benefit of Bluspark. Except as set forth in this Agreement, Customer may not use Bluspark's name or trademarks without Bluspark's prior written consent.
- 5.2. **Feedback.** Customer may provide Bluspark with feedback related to the Services, including without limitation, comments, suggestions, proposals, or ideas (the "Feedback"). Customer hereby agrees that Bluspark shall own all Feedback provided to Bluspark and such Feedback shall be considered Confidential Information as defined in this Agreement.
- 5.3. **Restrictions.** Except as otherwise expressly permitted by Bluspark in writing, Customer shall not modify, alter, decompile, disassemble, or sublicense the Services. All rights not expressly granted to the Customer are reserved by Bluspark.
- 5.4. **Customer Materials.** In order to provide the Services, Bluspark may require access to Customer Materials. Customer shall grant Bluspark a limited license to access, use, process, copy, distribute, and export the Customer Materials as necessary for Bluspark's delivery of Services to Customer. The Customer represents and warrants that:
  - 5.4.1. Customer has all rights, title, interest, permissions, and releases to the Customer Materials necessary to grant the limited license contemplated above.
  - 5.4.2. Customer's grant of the limited license to the Customer Materials and its use as authorized herein does not violate:
    - 5.4.2.1. Any applicable laws, regulations, or statutes;
    - 5.4.2.2. Any third-party intellectual property rights, privacy rights, publicity rights, or other rights; or
    - 5.4.2.3. Any of the Customer's or third-party contractual obligations, policies or terms governing such Customer Material.
- 5.5. **Data Processing and Privacy.** If and to the extent Bluspark process personal data on behalf of Customer in connection with the Services, the Parties shall comply with the terms of the Data Processing Addendum ("DPA") found here: [link]. The DPA is hereby incorporated herein by reference as if fully set forth. In the event of any conflict between the terms of this Agreement and the DPA with respect to the processing of personal data, the terms of the DPA shall control.

## 6. Confidentiality.

- 6.1. **Confidential Information.** The Parties acknowledge that by reason of their relationship to other hereunder, each may disclose or provide access (the "Disclosing Party") to the other Party (the "Receiving Party") certain Confidential Information. "Confidential Information" shall mean (i)

information concerning a Party's products, business and operations including, but not limited to, information relating to business plans, financial records, customers, suppliers, vendors, products, product samples, costs, sources, strategies, inventions, procedures, sales aids or literature, technical advice or knowledge, contractual agreements, pricing, price lists, product white paper, product specifications, Trade Secrets, procedures, distribution methods, inventories, marketing strategies and interests, algorithms, data, designs, drawings, work sheets, blueprints, concepts, samples, inventions, manufacturing processes, computer programs and systems and know-how or other intellectual property, of a Party and its affiliates that may be at any time furnished, communicated or delivered by the Disclosing Party to the Receiving Party, whether in oral, tangible, electronic or other form; (ii) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of or while present at a Party's Facilities; and (iv) all other non-public information provided by the Disclosing Party hereunder. In no event shall Service Provider's use or disclosure of information regarding or relating to the development, improvement, or use of any of Service Provider's products be subject to any limitation or restriction. All Confidential Information shall remain the property of the Disclosing Party.

- 6.2. Use of Confidential Information; Standard of Care.** The Receiving Party shall maintain the Confidential Information in strict confidence and disclose the Confidential Information only to its employees, subcontractors, consultants, and representatives who have a need to know such Confidential Information in order to fulfill the business affairs and transactions between the Parties contemplated by this Agreement and who are under confidentiality obligations no less restrictive than this Agreement. The Receiving Party shall at all times remain responsible for breaches of this Agreement arising from the acts of its employees, subcontractors, consultants, and representatives. Receiving Party shall use the same degree of care as it uses with respect to its own similar information, but no less than a reasonable degree of care, to protect the Confidential Information from any unauthorized use, disclosure, dissemination, or publication. Receiving Party shall only use the Confidential Information in furtherance of its performance of its obligations under this Agreement and agrees not to use the Disclosing Party's Confidential Information for any other purpose or for the benefit of any Third Party, without the prior written approval of the Disclosing Party. The Receiving Party shall not decompile, disassemble, or reverse engineer all or any part of the Confidential Information.
- 6.3. Exceptions.** Confidential Information does not include information that: (i) was lawfully in Receiving Party's possession before receipt from Disclosing Party; (ii) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the Receiving Party; (iii) is developed by Receiving Party independently of any Confidential Information it receives from Disclosing Party; (iv) Receiving Party receives from a Third Party free to make such disclosure without, to the best of Receiving Party's knowledge, breach of any legal or contractual obligation, or (v) is disclosed by Receiving Party with Disclosing Party's prior written approval.
- 6.4. Required Disclosures.** If the Receiving Party is confronted with legal action to disclose Confidential Information received under this Agreement, the Receiving Party shall, unless prohibited by applicable law, provide prompt written notice to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order or other relief it deems appropriate, and Receiving Party shall reasonably assist disclosing Party in such efforts. If disclosure is nonetheless required, the Receiving Party shall limit its disclosure to only that portion of the Confidential Information which it is advised by its legal counsel must be disclosed.

- 6.5. Unauthorized Use or Disclosure of Confidential Information; Equitable Relief.** In the event the Receiving Party discovers that any Confidential Information has been used, disseminated, or accessed in violation of this Agreement, it will immediately notify the Disclosing Party; take all commercially reasonable actions available to minimize the impact of the use, dissemination, or publication; and take any and all necessary steps to prevent any further breach of this Agreement. The Parties agree and acknowledge that any breach or threatened breach regarding the treatment of the Confidential Information may result in irreparable harm to the Disclosing Party for which there may be no adequate remedy at law. In such event the Disclosing Party shall be entitled to seek an injunction, without the necessity of posting a bond, to prevent any further breach of this Agreement, in addition to all other remedies available in Law or at equity.
- 6.6. Return of Confidential Information; Survival.** Receiving Party shall promptly return or, at Disclosing Party's option, certify destruction of all copies of Confidential Information at any time upon request or within thirty (30) days following the expiration or earlier termination of the Agreement. Notwithstanding any expiration or termination of this Agreement, Receiving Party's obligations to protect the Confidential Information pursuant to this Section will survive for two (2) years after the expiration or earlier termination of this Agreement.

## **7. Indemnification.**

- 7.1. Indemnification by Customer.** Customer agrees to indemnify, defend, and hold Bluspark and its Affiliates and their respective officers, directors, employees, and agents harmless from and against any and all third-party claims, losses, liabilities, damages expenses, and costs, including attorney's fees and court costs, arising out the Customer's (i) gross negligence or willful misconduct, (ii) use of the Services other than as contemplated in the Documentation or as intended by Bluspark, (iii) Customer Materials, or (iv) material breach of any terms of this Agreement. Bluspark shall provide Customer with prompt written notice of any claim, and Customer shall have the right to control the defense and settlement of any claim subject to indemnification hereunder, provided that Customer shall not settle any claim without Bluspark's written consent.
- 7.2. Intellectual Property Indemnification.** If a claim arises, or in Bluspark's reasonable opinion, is likely to arise, relating to a claim that Bluspark's Services infringes, misappropriates, or violates a third-party's intellectual property rights, Bluspark may, at its sole discretion:
- 7.2.1.** Obtain the right for Customer to continue to use the Services as contemplated by this Agreement;
  - 7.2.2.** Modify or replace the Service in whole or in part to make the Services non-infringing; or
  - 7.2.3.** If none of the above is, in the judgment of Bluspark, commercially reasonable, terminate the Agreement or the Purchase Order pursuant to which the Service was provided.
- 7.3.** Bluspark shall have no liability pursuant to Section 7.2:
- 7.3.1.** In the event the allegation of infringement is a result of a modification of the Services;
  - 7.3.2.** If the Services are not being used in accordance with Bluspark specifications, directions, or in accordance with the Documentation;

- 7.3.3. If the alleged infringement could have been avoided by use of a Bluspark provided update or patch to the Services;
- 7.3.4. If a claim arises from a non-Bluspark provided Service, or results from a breach by Customer of this Agreement; or
- 7.3.5. If the claim results from a combination of Bluspark Services with any third-party service or product.

7.4. THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.2 CONSTITUTE BLUSPARK'S SOLE AND EXCLUSIVE OBLIGATION, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIMS, LOSSES, DAMAGES, LIABILITIES, OR EXPENSES SUBJECT TO INTELLECTUAL PROPERTY INDEMNIFICATION UNDER THESE SERVICE TERMS.

**8. Limitation of Liability; Actions.** IN NO EVENT SHALL BLUSPARK BE LIABLE UNDER THESE SERVICE TERMS TO THE CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. BLUSPARK'S AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THESE SERVICE TERMS WILL BE LIMITED TO AN AMOUNT EQUAL TO THE SUM OF MONEY PAID BY CUSTOMER TO BLUSPARK UNDER THESE SERVICE TERMS IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THESE SERVICE TERMS MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION.

**9. Non-Solicitation and Non-Disparagement.**

9.1. **Non-Solicitation.** During the Term of these Service Terms and for two (2) years following the expiration or termination date of these Service Terms, Customer agrees not to directly solicit or induce any Bluspark employee that has interacted with Customer or has been involved, directly or indirectly, in the performance, review and/or acceptance of the Services, to consider or accept employment with Customer.

9.2. **Non-Disparagement.** During the Term of these Service Terms and for two (2) years following the expiration or termination date of these Service Terms, Customer agrees not to falsely disparage or otherwise speak or write negatively about Bluspark or the Services or cause any other person to falsely disparage, speak or write negatively about Bluspark or the Services.

**10. Miscellaneous.**

10.1. **Access.** The Customer acknowledges that Bluspark may require access to Customer systems and administrative resources in order to fully perform the Services. Customer shall grant Bluspark all access reasonably required access. If adequate access is not granted, Bluspark shall not be responsible for any Services that are not performed as a result.

**10.2. Publicity.** Neither Party shall, without the prior written approval of the other Party, refer to the existence of this Agreement, or use the name, trade name, trademark or service mark of the other Party or represent directly or indirectly that any product or service by such Party has been approved or endorsed by the other Party in any press release, advertising, or materials distributed to prospective customers. Notwithstanding the foregoing, Customer grants Bluspark the right to include Customer's name in Bluspark's marketing materials published through any medium, including without limitation, Bluspark's website, press releases and case studies issued by the Customer. Customer hereby grants any rights and licenses required for Bluspark to execute the foregoing sentence.