

Master Terms of Service Agreement

By using this site or the services, you represent and warrant that you are eighteen (18) years of age or older and that you are recognised as being able to form legally binding contracts under applicable law or are authorized to enter into a legal agreement on behalf of a corporate entity. Ordering our services and accessing your account is deemed acceptance of these Terms of Service

The terms “we”, “us” or “our” shall refer to Blacknight Internet Solutions Ltd . The terms “you”, “your”, “User” or “customer” or “Client” shall refer to any individual or entity who accepts this Agreement, has access to your account or uses the Services. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

The term Service applies to the product(s) offered on our website and via the control pane, together with services ordered via email or telephone, including but not limited to Hosting, domain registration, SSL certificates, Email, cloud services, site builder services, backup services, add-on management services.

Blacknight may, in its sole and absolute discretion and without notice, change or modify this Agreement, and any policies or agreements which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon posting to this Site. Your use of this Site or the Services after such changes or modifications have been made shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use this Site or the Services. In addition, Blacknight may occasionally notify you of changes or modifications to this Agreement by email. It is therefore very important that you keep your account information current. Blacknight assumes no liability or responsibility for your failure to receive an email notification if such failure results from an inaccurate email address, or third-party service issues. In addition, Blacknight may terminate Your use of Services for any violation or breach of any of the terms of this Agreement by You.

These terms and conditions, policies contained in blacknight.com/legal/policies , and the order form on our website at blacknight.com comprise the agreement between you and us ("Contract"). This Contract explains our obligations to you and your obligations to us in relation to the service(s) you purchase.

1.0 Term and Termination

Unless specified to the contrary elsewhere herein, this contract shall come into force when we accept your order for the service(s) which we will acknowledge by emailing a confirmation notice to the email address you specify on sign up and shall continue in force until the expiry of the Term or in accordance with this clause.

The Customer may terminate this contract on the following grounds:

- i. By opting not to renew the service at the renewal date (note if the payment method chosen is set to “auto-renew” the contract will automatically renew for the next period, unless the customer changes the status of same through their control panel).

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- ii. Where Blacknight is in material breach of any obligation under the contract and, where notice has been provided by the customer to Blacknight of the material breach and where Blacknight can remedy that breach but have failed to do so within thirty-one (31) days of you having notified

Blacknight may terminate the contract

- i. By providing written notice of termination, if you are in material breach of any obligation under the contract and, where you can remedy that breach but have failed to do so within fourteen (14) days of us having notified you of that breach and the proposed remedy.
- ii. with immediate effect, if you provide any false, or misleading information, or if you fail to correct material errors or omissions relating to any information supplied by you, resulting in that information becoming false, inaccurate, incomplete or misleading; and/or
- iii. with immediate effect on giving you written notice of termination, if you provide any, inaccurate or, incomplete information, or if you fail to correct material errors or omissions relating to any information supplied by you, resulting in that information becoming, inaccurate, or incomplete and/or
- iv. with immediate effect on us giving you written notice of termination, if you become insolvent, have a receiver or examiner appointed over the whole or any part of your assets, enter into any composition with creditors, or have an order made or resolution passed to be wound up (otherwise than for the purposes of a scheme for solvent amalgamation or reconstruction) or, where you are an individual or partnership, if you become bankrupt, make a voluntary arrangement with your creditors or have a receiver or administrator appointed; and/or
- v. with immediate effect on giving you written notice of termination of breach any provision of our Acceptable Use Policy (blacknight.com/legal);
- vi. with immediate effect on giving you notice if the supply of the service and/or additional services to you may (in our reasonable opinion) expose us to the risk of litigation or other civil or criminal proceedings.

If you terminate the Contract during the initial subscription period as specified in the specific terms and conditions applicable to the service, or the acknowledgement of order, as the case may be, we may be entitled to charge you a cancellation fee equivalent to the subscription fee for the initial period, less any sums paid by you for that initial period. Please refer to the specific terms and conditions of the service for more information on this.

2.0 Warranty and Limitation of liability

Blacknight warrants that:

- i. In providing the Services it shall use reasonable skill and care; and
- ii. Blacknight represents and warrants to the Client (for as long as the client exists) in relation to each of the documents, material, data, software or other information provided as part of the Services that:

- a) Blacknight has and will continue to have the right for the duration of the Contract and as far as is practical to grant all the rights and licences it grants or purports to grant to the Client pursuant to and on the terms of this Contract;
- b) Blacknight has obtained all consents, permissions and licences necessary to enable the Client to exercise the rights granted or purported to be granted to it by Blacknight and to use material, data, software or other information provided as part of the Support Services pursuant to and on the terms of this Contract and always in accordance with the laws of the Republic of Ireland.

Without prejudice to Sub-Clause 2.0 (ii) the Client agrees that Blacknight's liability for damages under or in connection with this Contract, howsoever arising (including, without limitation, for breach of contract, for negligence or other tort, or concerning the use or inclusion of any document, material, idea, data or other information in the Support Services), shall in no circumstances exceed in the aggregate the sum of twice the fees paid by the Client hereunder in the 12 month period immediately preceding the event giving rise to the claim provided however that Blacknight shall have no liability under or in connection with this Contract, howsoever arising, for damages in respect of loss of profits or contracts or for indirect or consequential loss or damage.

Except as aforesaid, Blacknight gives no other warranties or conditions, express or implied including but not limited to warranties or conditions of merchantable quality or fitness for particular purpose.

3.0 Credit Terms and Payment

Blacknight do not offer any credit terms for online purchases.

- i. Charges are payable as specified in the specific terms and conditions relating to the service(s) in question or as outlined on the website and confirmed at the checkout cart, and are due on an ongoing basis until this Contract is terminated.
- ii. The charges are inclusive of any third-party payments that we may make on your behalf, for example domain registration fees payable to the applicable domain name registry.
- iii. VAT and other taxes and duties (where applicable) are payable in addition to the charges for the service(s) and for EU customers VAT rates are determined by your country of residence.
- iv. If you do not make payment on the due date, we will:
 - a. Be entitled to suspend the service(s) until payment is made in full, and/or
 - b. terminate the Contract in whole or in part and cease providing the service(s).
- v. If any cheque or debit or credit card payment paid to us by you in payment of the request and/or services, is not honored for any reason registration and/or the service to which the payment relates will be suspended pending payment of the outstanding account and the following charges will apply

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1. Chargeback payment for a legitimate charge : €40.00 + vat
 2. Failed direct debit payment : €10:00 + vat
 3. Returned cheque : €10:00 + vat
- vi. Where a payment is made to us via bank transfer of any kind, all bank charges incurred will be your responsibility.
- vii. Renewals
- a. Where you have opted for payment method 'auto-renewal' by way of a credit / debit card, of the services due after, we will advise you of the impending expiry of the services and give you notice that we will be automatically charging your Credit/Debit card. The notice will be sent to the then current billing email address specified by you on your Account. In the event the payment fails, we will notify you via e-mail and the system will attempt to take payment 3 days after the original attempt and another 3 days after that. If subsequent attempts to charge your card fail, it will be your responsibility to make alternative payment arrangements for your service renewal. We will not be liable in respect of the non-renewal of a service if, having sent you a renewal notice, we do not receive notice of renewal and the applicable payment, or if you fail to notify us of a change of contact details.
 - b. It is your responsibility to ensure that any products/services which you have selected to auto renew through your account with us, have valid up-to-date credit/debit card details assigned to it/them at all times. Blacknight will not be responsible for failed payments or loss of any product or service(s) as a result of invalid, expired or missing credit/debit card details.

4.0 Notices and Communications

Any notice, which expression includes any other communication whatsoever which is made in accordance with this Contract, should reference the Customer's Control Panel Account Number (cp.blacknight.com) and shall, without prejudice to any other method of giving it, be sufficiently given if it is sent by email to the customers email address as provided at the time of purchase of the services or to such other email address as the respective party may advise by notice in amending same under the control panel. Notices shall be deemed to have been properly given after two working days.

5.0 Waiver

No delay or failure of either party in enforcing against the other party any term or condition of this Contract, and no partial exercise by either party of any right hereunder, shall be deemed to be a waiver of any right of that party under this Contract.

6.0 Legal Construction

The parties have read and understand this Contract and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto.

Clause headings are inserted for convenience of reference only and shall not affect the interpretation of this Contract.

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If the scope of any of the provisions of this Contract is too broad in any respect to permit enforcement to its full extent, then the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly.

No purported variation of this Contract shall take effect unless made in writing and signed by an authorised representative of each party.

This Contract shall be governed by Irish Law and the parties hereby submit to the jurisdiction of the Irish Courts

7.0 Personal Information

By registering for the service(s) you consent to us using and/or disclosing any personal information as follows:

- i. for processing your application, which may involve a credit check which, in the case of an individual, may record that a credit check has been made and disclosing your personal and account information to a bank for the purposes of setting up a direct debit arrangement; and
- ii. if necessary, providing or arranging for third parties to provide customer care facilities and bill you for the service, which may involve disclosing your personal information to third parties solely for those purposes; and
- iii. we may retain information that you provide and from time to time may use this information to offer you other similar services that we feel may be of interest to you both from us and other companies. We may contact you by post or e-mail. If you do not wish to receive this information please let us know either by e-mail using the unsubscribe link given on our mailings or by contacting us at help.blacknight.com.

8.0 Force Majeure

Neither party shall be liable for any delay in meeting or for failure to meet any of its obligations under this Contract due to any cause outside its reasonable control, including, without limitation, strikes, lock-outs, Acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, failure or delay on the part of any sub-contractor beyond the sub-contractor's reasonable control or the lack of availability of materials.

If either party is prevented from meeting any of its obligations due to any cause outside its reasonable control, it shall promptly notify the other party in writing of the circumstances and the other party shall grant a reasonable extension for the performance of this Contract, provided however that if either party shall have been so prevented from meeting its obligations for more than thirty days following receipt of such notice, then either party may terminate this Contract forthwith upon written notice. In the event of termination for this reason, the Client shall pay Blacknight a reasonable sum for the Support Services which shall include the costs and expenses relating to materials or services obtained or ordered in connection with providing the Support Services which cannot reasonably be defrayed elsewhere

9.0 General Provisions

- i. Blacknight may delegate the performance of any of its obligations hereunder to third parties without the Client's consent, provided however that Blacknight shall remain liable in contract for the performance of the Services notwithstanding such delegation. Nothing in this Contract confers or purports to confer on any third party any benefit or right to enforce any term of this Contract.
- ii. No delay or failure of either party in enforcing against the other party any term or condition of this Contract, and no partial exercise by either party of any right hereunder, shall be deemed to be a waiver of any right of that party under this Contract.
- iii. The parties have read and understand this Contract and agree that it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof which supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between them relating thereto.
- iv. The provision of the service(s) and the application of these terms and conditions and the formation, validity and interpretation of the Contract are governed by Irish law and subject to the exclusive jurisdiction of the Irish courts provided that nothing in this clause shall prevent us from seeking interim or injunctive relief in the Courts of any other jurisdiction.
- v. You agree that we may disclose your personal information to third parties in the event that we sell or buy any business or assets, in which case we may disclose your personal data to the prospective seller or buyer of such business or assets. Any disclosure of personal information will be strictly controlled and made fully in accordance with GDPR legislation. In this regard we refer you to our GDPR policy page at blacknight.com/legal/gdpr
- vi. This Contract shall be governed by Irish Law and the parties hereby submit to the jurisdiction of the Irish Courts

10.0 Data Protection and Confidentiality

(version 1.0.1, March 2018)

("DPA")

the **Customer**

and

Blacknight

(together with the Customer, the "**Parties**")

1 Scope of the DPA (Data Processing Agreement)

1.1 This DPA forms part of the Agreement currently in place between the Customer and Blacknight and reflects the Parties' agreement with regard to the processing of personal data.

1.2 Blacknight may act as a data processor and/or a Data Controller for the Customer (subject to the services being provided), where Blacknight processes personal data for the Customer and may control access to portions of the Customer data stored on Blacknight platforms.

1.3 The personal data to be processed by Blacknight concerns the categories of data, the categories of data subjects and the purposes of the processing set out in Annex A.

1.4 Customer data stored on Blacknight platform(s) is controlled by the customer and Blacknight may act as a Joint Controller in that the information is stored, made available, may be backed up, deleted, or otherwise managed, solely as instructed by the Customer.

1.5 "Personal data" means any information relating to an identified or identifiable natural person, see article 4(1) of Regulation (EU) 2016/679 of 27 April 2016 (the General Data Protection Regulation "GDPR").

2 Processing of Personal Data

2.1 **Instructions:** Blacknight is instructed to process the personal data only for the purposes of providing the Services as set out in Annex A. Blacknight may not process or use the Customer's personal data for any other purpose than provided in the instructions, including the transfer of personal data to any third country or an international organisation, unless Blacknight is required to do so according to EU or member state law. In that case, Blacknight shall inform the Customer in writing of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

2.2 If the Customer in the instructions in Annex A or otherwise has given permission to a transfer of personal data to a third country or to international organisations, Blacknight must ensure that there is a legal basis for the transfer, e.g. the EU Commission's Standard Contractual Clauses for the transfer of personal data to third countries.

2.3 If Blacknight is of the opinion that an instruction from the Customer is in violation of the GDPR, or other EU or member state data protection provisions, Blacknight shall immediately inform the Customer in writing about this and will not be obliged to transfer the Personal Data.

3 Blacknight's general obligations

3.1 Blacknight will use reasonable endeavors to ensure that persons authorised to process the personal data will act with confidentiality or are under an appropriate statutory obligation of confidentiality.

3.2 Blacknight shall implement reasonable technical and organisational measures to prevent that the personal data processed is

- (i) accidentally or unlawfully destroyed, lost or altered,
- (ii) disclosed or made available without authorisation, or
- (iii) otherwise processed in violation of applicable laws relevant, including the GDPR, for the Services.

3.3 The appropriate technical and organisational security measures must be determined with due regard for

- (i) the current state of the art,
- (ii) the reasonable cost of their implementation, and
- (iii) the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

3.4 Blacknight shall upon reasonable request (to a maximum of once per annum) provide the Customer with sufficient information to enable the Customer to ensure that Blacknight complies with its obligations under the DPA, including ensuring that the appropriate technical and organisational security measures have been implemented.

3.5 The Customer is entitled at its own cost to appoint an independent expert who shall have reasonable access to Blacknight's premises during working hours and receive the necessary information in order to be able to audit whether Blacknight complies with its obligations under the DPA, including ensuring that the appropriate technical and organisational security measures have been implemented in relation to the Customers Data only. The Customer shall provide Blacknight with 14 days prior written notice and the Customer is obligated to ensure that the expert signs a customary non-disclosure agreement, and treat all information obtained or received from Blacknight confidentially, and may only share the information with the Customer. Any findings or reports created on the basis of such an inspection must

be shared with Blacknight and shall be regarded as confidential information. The Customer will be liable for any confidential information released to the public.

3.6 Blacknight must provide information related to the provision of the Services to the customer only to authorities or the Customer's external advisors, including auditors, if this is necessary for the performance of their duties in accordance with EU or member state law.

3.7 Blacknight must give authorities who by EU or member state law have a right to enter the Customer's or the Customer's supplier's facilities, or representatives of the authorities, access to Blacknight physical facilities against proper proof of identity.

3.8 Blacknight must without undue delay after becoming aware of the facts in writing notify the Customer about:

(i) any request for disclosure of personal data processed under the DPA by authorities, unless expressly prohibited under EU or member state law,

(ii) any suspicion or finding of (a) breach of security that results in accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed by Blacknight in connection with the Services, or (b) other failure to comply with Blacknight's obligations under clause 3.2 and 3.3, or

(iii) any request for access to the personal data received directly from the data subjects or from third parties relating to the processing of personal data on behalf of the Customer.

3.9 Blacknight must promptly assist the Customer with the handling of any requests from data subjects under Chapter III of the GDPR, including requests for access, rectification, blocking or deletion, which relates to the processing of personal data in connection with the Services.

3.10 Blacknight must assist the Customer, at the customer's cost with meeting the other obligations that may be incumbent on the Customer according to EU or member state law related to data processing where the assistance of Blacknight is implied, and where the assistance of Blacknight is necessary for the Customer to comply with its obligations. This includes, but is not limited to, at request to provide the Customer with all necessary information about an incident under Clause 3.9 (ii), and all necessary information for an impact assessment in accordance with article 35 and 36 of the GDPR.

3.11 In Annex A, Blacknight has stated the servers, offices etc. used to provide the Services. The Customer may at any time request reasonable information about the servers, offices used by Blacknight in connection with the Services and Blacknight shall respond within 30 days with such information as Blacknight see as reasonably required.

4 Sub-processors

4.1 Blacknight may engage sub-processors. At the time of this DPA, Blacknight uses the sub-processors listed [here](#) to provide the Services. Blacknight undertakes to inform the Customer of any intended changes concerning the addition or replacement of a sub-processor by providing prior written notice via the Customer's business account. If the Customer can document objective and valid and reasonable reasons not to accept suggested new sub-processors, the Customer may object to the use of these suggested new sub-processors. If Blacknight chooses not to suggest alternative sub-processors, or if the Customer has valid and objective reasons to object to all suggested alternatives, either party is entitled to terminate the contract with Blacknight within 30 days after receiving notice hereof. Blacknight must inform the Customer in writing of the discontinued use of a sub-processor.

4.2 Prior to the engagement of a sub-processor, Blacknight shall conclude a written agreement with the sub-processor, in which at least the same data protection obligations as set out in the DPA shall be imposed on the sub-processor, including an obligation to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR.

5 Amendments

5.1 Blacknight may at any time amend this DPA, and such changes or modifications shall be effective immediately upon posting

6 Term and consequences of the termination of the DPA

6.1 The DPA enters into force on 25 May 2018. The term of this DPA shall correspond to the term of the Agreement. Please see : www.blacknight.com/legal/gdpr

6.2 On the Customer's request Blacknight shall immediately transfer or delete (including anonymisation) personal data, which Blacknight is processing for the Customer, unless EU or member state law requires storage of the personal data, or unless the performance of the request is deemed to be excessive or unnecessary and will not significantly impact the privacy or rights of the data subject.

7 Priority

7.1 If any of the provisions of the DPA conflict with the provisions of the Agreement, then the provisions of the DPA shall prevail. However, the requirements in clause 3 do not apply to the extent that the Parties in another agreement have set out stricter obligations for Blacknight. Furthermore, the DPA shall not apply if and to the extent of the EU Commission's Standard Contractual Clauses for the transfer of personal data to third countries are concluded and such clauses set out stricter obligations for Blacknight and/or for sub-processors.

7.2 This DPA does not determine the Customer's remuneration of Blacknight for Services according to the Agreement.

8 Blacknight's Data Protection Office

8.1 The Customer can get in contact with Blacknight's data protection office by sending an email to: gdpr@Blacknight.com

ANNEX A

This Annex constitutes the Customer's instruction to Blacknight in connection with Blacknight's data processing for the Customer, and is an integrated part of the Agreement.

1.1 The processing of personal data

a) Purpose and nature of the processing operations

- Providing the Customer with the platform option subscribed to, including but not limited to

- Domain registration
- shared hosting
- email (hosted email, Office 365 , Hosted Exchange)
- SSL certs
- cloud services
- dedicated servers
- ip-transit
- broadband services
- co-location services
- backup services (Dropmysite, Acronis, r1soft)
- Sitebuilder services (Basekit)
- SEO / analytics services (Ranking Coach)

and the processing of registration for services, billing for said services, maintenance and outage notifications, occasional marketing and promotional services related to the services Blacknight offers.

b) Categories of data subjects

The Customer

c) Categories of personal data

- Name

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- Email address
- Reference number, such as an Account ID or similar.
- Telephone number and or mobile phone number
- Login ID and Password
- Payment details (bank, credit card, paypal etc.)
- Address and postcode
- Proof of identity (such as passport /driving licence/ headed company paper)

d) Special categories of data

- None

e) Location(s), including name of country/countries processing

- Ireland