

1. INTRODUCTION

BlueHat Cyber provides Goods and Services in the information technology field, including hosting, managed services and support and maintenance services. Customer wishes to appoint BlueHat Cyber to supply such Goods and render such Services from time to time.

2. DEFINITIONS AND INTERPRETATION

2.1. **Definitions.** For purposes of the Agreement, the following terms shall have the following meanings –

- 2.1.1. **“Agreement”** – the agreement between the Parties which consists of –
- 2.1.1.1. these Standard Terms; and
- 2.1.1.2. any Service Orders concluded pursuant to these Standard Terms, incorporating any Service Terms; and includes any schedules, annexures, exhibits and attachments thereto;
- 2.1.2. **“AUP”** - the Acceptable Use Policy of BlueHat Cyber, as updated and amended from time to time, describing the obligations associated with the use of the IaaS Services and prohibiting certain types of activity such as hacking, spamming, downloading and hosting of illegal content, the most recent version of which can be found at <https://www.siliconsky.com/aup/>;
- 2.1.3. **“Applicable Hourly Rate”** – unless expressly otherwise agreed in a Service Order, BlueHat Cyber’s then-current standard time and materials fees and charges;
- 2.1.4. **“Business Day”** – any day other than a Saturday, Sunday, or public holiday in Grand Rapids, Michigan, USA;
- 2.1.5. **“Commencement Date”** – the commencement date of a Service Order, being the earlier of (i) the date indicated as such in the Service Order, failing which the signature date thereof (if any), or (ii) the date on which the relevant Services, or any part thereof, are first accessed and/or used;
- 2.1.6. **“CPI”** - the average year-on-year percentage change in the Consumer Price Index (All Cities, All Urban Consumers, All Items, 1982- 1984=100) or its successor Consumer Price Index, as published by the United States Bureau of Labor Statistics, for the preceding 12 (twelve) months;
- 2.1.7. **“Customer”** - the customer that enters into a Service Order;
- 2.1.8. **“Customer Data”** - Customer’s data (including personal information about an identifiable individual)—
- 2.1.8.1. provided to BlueHat Cyber either by Customer or by any third party on Customer’s behalf; or
- 2.1.8.2. data specific to the Services which BlueHat Cyber generates, processes, or supplies to Customer in the performance of the Services;
- but excludes any derived data that is created by BlueHat Cyber for its own internal purposes or which is proprietary or confidential to BlueHat Cyber or BlueHat Cyber’s sub-contractors;
- 2.1.9. **“Dedicated Infrastructure”** – if applicable, the infrastructure that is dedicated to Customer on-premises or off-premises, as listed in a Service Order, that is utilized by BlueHat Cyber for the purposes of providing the Services to Customer, and that remains the property of BlueHat Cyber. Such Dedicated Infrastructure may include servers, storage, switches and/or firewalls;

- 2.1.10. **“Fees”** – the fees and charges payable by Customer to BlueHat Cyber in respect of the Goods and/or Services, as set out in the Agreement;
- 2.1.11. **“Goods”** – if applicable, the goods to be provided by BlueHat Cyber to Customer pursuant to a Service Order, as set out in such Service Order;
- 2.1.12. **“IaaS Services”** – the infrastructure-as-a-service services to be provided under this Agreement, as detailed in the Service Schedule, and as read with any Service Order concluded pursuant to these Standard Terms;
- 2.1.13. **“Parties”** – the Customer and BlueHat Cyber, and a reference to **“Party”** shall be a reference to either one of them, as the context may require;
- 2.1.14. **“Personnel”** – any director, employee, agent, consultant, contractor or other representative of a Party;
- 2.1.15. **“Proposal”** – a BlueHat Cyber document, regardless of the form or title thereof, which incorporates by reference the relevant Service Terms (and these Standard Terms) and which describes the Services and estimated Fees;
- 2.1.16. **“Services”** – collectively, the IaaS Services and Support Services, and any other services to be rendered by BlueHat Cyber to Customer pursuant to a Service Order, as set out in such Service Order;
- 2.1.17. **“Service Levels”** – the levels according to which each Service is to be provided, if any, as set out in the corresponding Service Terms;
- 2.1.18. **“Service Order”** - either (i) a services order agreed and signed by both the Customer and BlueHat Cyber, or (ii) Proposal signed by Customer and accepted by BlueHat Cyber, describing the specific Services to be provided by BlueHat Cyber to Customer, and the Fees payable by Customer in respect thereof;
- 2.1.19. **“Service Schedule”** – the service schedule annexed hereto which sets out the IaaS Services and Support Services to be provided pursuant hereto, as updated and amended from time to time;
- 2.1.20. **“Service Terms”** - one or more documents incorporating these Standard Terms and containing the specific terms relating to the Services provided in terms of a Service Order, as updated and amended from time to time.
- 2.1.21. **“BlueHat Cyber IP”**- any and all intellectual property that BlueHat Cyber has created, acquired or otherwise has rights in and may, in connection with the performance of its obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes, without limitation, all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems;
- 2.1.22. **“Standard Terms”** – these standard terms and conditions and includes any schedules, annexures, exhibits and attachments hereto, as updated and amended from time to time; and
- 2.1.23. **“Support Services”** – the technical support services to be provided under these Standard Terms, as

detailed in as detailed in the Service Schedule, and as read with any Service Order concluded pursuant to these Standard Terms.

- 2.1.24. **"System"** - the infrastructure owned, licenced, used, managed and/or controlled by BlueHat Cyber from time to time, which it uses to provide the Services, and which may be accessed by Customer pursuant to, and on the terms and conditions of, the Agreement.

3. APPLICATION AND AGREEMENT STRUCTURE

- 3.1. All terms and conditions applicable to the Goods and Services (in addition to the applicable terms and conditions contained herein) shall be set out in Service Orders that will incorporate:

3.1.1. these Standard Terms; and

3.1.2. any Service Terms;

Service Orders shall, where applicable be executed before their implementation commences.

- 3.2. Except where specifically provided to the contrary in the Service Terms, and then only to the extent so specified, each set of Service Terms shall be subject to these Standard Terms. Insofar as any term and condition in a set of Specific Terms conflicts with these Standard Terms in respect of—

3.2.1. the description of Goods or Services, the terms and conditions in the Service Terms shall prevail; or

3.2.2. any other matter, these Standard Terms shall prevail.

- 3.3. Notwithstanding anything to the contrary contained in this Agreement or any other agreement between the Parties, this Agreement shall apply to the provision of the Services notwithstanding any purchasing or procurement conditions or other conditions stipulated by Customer, or any other document provided by Customer in respect of the Services.

- 3.4. Except as expressly stated to the contrary in a Service Order, the terms and conditions of one Service Order shall not apply to any other Service Order.

4. FORMATION OF THE AGREEMENT

- 4.1. These Standard Terms will come into full force and effect upon the earlier of:

4.1.1. The Commencement Date of a Service Order in accordance with these Standard Terms;

4.1.2. acceptance of a Proposal by Customer in writing; or

4.1.3. access and/or use of the Services.

- 4.2. Unless explicitly stated otherwise by BlueHat Cyber in a Proposal, each Proposal shall be valid for a period of 7 (seven) days from the date of issue. BlueHat Cyber shall be entitled, without liability to Customer, to amend the Proposal and/or refuse to accept any Service Order placed pursuant thereto after the expiration of such 7 (seven) day period.

5. COMMENCEMENT AND DURATION

- 5.1. Unless otherwise indicated in a Service Order, each Service Order shall commence on its Commencement Date, and shall continue for an initial period of 12 (twelve) months. Thereafter, such Service Order shall automatically renew for successive 12 (twelve) month periods (each a **"Renewal Period"**), subject to the right of either Party to terminate the Service Order earlier in accordance with this Agreement.

- 5.2. For the avoidance of doubt, the duration of the Service Order shall not be affected by any amendments or additions to the Services provided for therein, unless

otherwise indicated by BlueHat Cyber.

6. SERVICE CHANGE PROCEDURE

- 6.1. During the term of a Service Order, BlueHat Cyber or Customer may propose/request changes in or additions to the Services (including a reduction in the Services) (**"New Services"**).

- 6.2. If Customer desires to propose a New Service, Customer shall notify BlueHat Cyber of its requirements in sufficient detail. BlueHat Cyber shall respond to such proposal within such period as is reasonable in the circumstances by preparing and delivering to Customer a written proposal, in the form of a proposed amended Service Order (**"Service Amendment Proposal"**), indicating:

6.2.1. the effective date or anticipated time schedule for implementing the New Services and the effect that the New Services will have on the term and duration of the affected Service Orders, if any;

6.2.2. BlueHat Cyber's proposal for an adjustment of the Fees, if any;

6.2.3. the affect that the New Services will have on the then-current Services and delivery thereof; and

6.2.4. any other information in BlueHat Cyber's discretion that it may deem relevant.

- 6.3. If BlueHat Cyber desires to propose a New Service, it may do so by preparing and delivering a Service Amendment Proposal to Customer, which substantially complies with clause 6.2.

- 6.4. Following the receipt by Customer of the Service Amendment Proposal above, Customer shall, subject to clause 6.5 below, either:

6.4.1. accept the Service Amendment Proposal;

6.4.2. reject the Service Amendment Proposal;

6.4.3. ask BlueHat Cyber for further information pertaining to the Service Amendment Proposal to consider (in which event the period of acceptance or rejection, as referred to below, will be extended by a further 5 (five) Business Days following receipt of such further information or clarification; or

6.4.4. suggest reasonable modifications to the Service Amendment Proposal (which suggestions may be considered or rejected by BlueHat Cyber in its discretion).

- 6.5. A Service Amendment Proposal, once submitted as aforesaid, shall constitute an offer by BlueHat Cyber, capable of acceptance by Customer, to implement the proposal described therein on the terms set out therein. If BlueHat Cyber's offer is not accepted by Customer in writing, or Customer does not start using the New Services within 10 (ten) Business Days, or such other period as is reasonable in the discretion of BlueHat Cyber, from the date of receipt of BlueHat Cyber's proposal, BlueHat Cyber shall be entitled to revoke its offer without notice to Customer.

- 6.6. If Customer elects to accept the offer set out in the Service Amendment Proposal, as evidenced by the written acceptance of Customer or by accessing and/or using the New Services or any part thereof, the Service Amendment Proposal shall constitute an agreed amendment to the Service Order (**"Amended Service Order"**), and any and all New Services described in the Service Amendment Proposal shall thereafter be included in the Services. BlueHat Cyber shall be entitled, but not obligated, to furnish the Customer with an

updated Service Order incorporating the New Services, provided that such replacement Service Order shall not be a prerequisite for the New Services to become incorporated into the Service Order.

6.7. Notwithstanding anything to the contrary contained in the Agreement, any New Services:

- 6.7.1. offered by BlueHat Cyber to the Customer in writing in an amended and updated Service Order, which is accepted by the Customer in writing or by Customer using the New Services or any part thereof; or
- 6.7.2. requested by Customer, and subsequently provided by BlueHat Cyber and used by Customer (and not rejected by Customer within 7 (seven) days of first use of the New Services or any part thereof);

shall be binding on the Parties notwithstanding any non-compliance with the procedure set out in this clause 6, and such amended and updated Services, as set out in the relevant Service Amendment Proposal, shall be deemed to constitute an Amended Service Order for the purposes of the Agreement.

6.8. Notwithstanding anything to the contrary in the Agreement, BlueHat Cyber may modify, amend, enhance, update or provide an appropriate replacement for any of the Services, or any element, at any time, provided that BlueHat Cyber shall not reduce the functionality, availability or reliability of the Services.

7. USE RIGHTS

7.1. During the term of a Service Order and in consideration for payment of the applicable Fees, BlueHat Cyber grants Customer a limited, revocable, non-transferable, non-exclusive licence to access and use the IaaS Services and Support Services, subject to these Standard Terms.

7.2. Customer hereby:

- 7.2.1. accepts the licence granted to it in terms of clause 7.1;
- 7.2.2. acknowledges that it will only use the IaaS Services and Support Services in accordance with these Standard Terms, including the Service Order and the AUP;
- 7.2.3. is authorized to use the IaaS Services and Support Services only for its own business purposes; and
- 7.2.4. acknowledges that it obtains no rights of ownership of the IaaS Services and Support Services or any part thereof whatsoever.

7.3. Customer shall not:

- 7.3.1. Modify, translate or create derivative works based on the Services, nor reverse assemble, decompile or reverse engineer the Services, whether in whole or in part, or otherwise attempt to derive the source code, underlying ideas, algorithms, file formats, programming of the Services or any files contained in or generated by the Services, nor shall it permit, whether directly or indirectly, any third party to do so;
- 7.3.2. merge or combine the whole or any part of the Services or any part thereof with any third-party software or documentation without the prior written consent of BlueHat Cyber;
- 7.3.3. grant any third party, besides its Personnel or authorized users, direct access to the Services, including, without limitation by way of lease, download, as an application or any other method. For the avoidance of doubt, if Customer allows such persons to use the Services, Customer shall be responsible for

ensuring that such persons' access to and use of the Services complies with these terms, and shall at all times remain solely liable for the acts and omissions of such persons as if they were the acts and omissions of Customer;

- 7.3.4. lend or transfer the Services or any part thereof to any third party, without the prior written consent of BlueHat Cyber;
- 7.3.5. sub-license or otherwise transfer the use of the Services, whether in whole or in part, to any third party, without the prior written consent of BlueHat Cyber;
- 7.3.6. remove or suppress any proprietary notices on the Services; or
- 7.3.7. share its password(s) with any other individual and undertakes to notify BlueHat Cyber promptly of any unauthorized access or use of the Services or any content available through the Services.
- 7.4. Additional restrictions may apply to certain software, files, programs or data supplied by third parties or embedded in software made available through the Services. Such restrictions will be set out in the instructions or release notes and/or in the form of end user licence terms provided and/or made available with such material, and are incorporated herein by reference.
- 7.5. BlueHat Cyber reserves the right forthwith to suspend or terminate the provision of the Services (either in whole or in part) in the event of a default or breach of the terms of this clause 7.

8. OBLIGATIONS OF THE CUSTOMER

8.1. In order to enable BlueHat Cyber to provide the Services pursuant to this Agreement, Customer shall, to the extent required by BlueHat Cyber, provide timely ongoing assistance, liaison, input, support and full cooperation and at the Customer's sole cost and expense shall—

- 8.1.1. comply with all reasonable policies, procedures and instructions of BlueHat Cyber in respect of the provision of the Services pursuant to the Agreement;
- 8.1.2. notify BlueHat Cyber as soon as reasonably possible of any issues, concerns or disputes which may affect BlueHat Cyber's ability to render the Services in accordance with the Agreement;
- 8.1.3. take all necessary measures to ensure that no malicious, unlicensed or illegal software is introduced into Customer's or BlueHat Cyber's systems by its Personnel or any third party;
- 8.1.4. obtain and maintain any licences or consents necessary for BlueHat Cyber to provide the Services to Customer; and
- 8.1.5. obtain, maintain and comply with all licences required in respect of third party software used with and/or access through the Services.
- 8.2. Unless otherwise agreed in a separate Service Order, Customer shall, at its own cost and expense, procure, install and maintain all equipment and software, telecommunications services, telephone lines, communication interfaces and cabling necessary to enable Customer to access the System.
- 8.3. To the extent that Customer installs any software on the System, Customer warrants and represents that it has all of the necessary rights, permissions and licences to install and host such software on the System and agrees to defend, indemnify, and hold harmless BlueHat Cyber against any and all damages, losses, penalties or costs

(including, but not limited to, reasonable attorney's fees) which it may suffer or incur (without any limitation or exclusion of liability whatsoever), whether directly or indirectly, and howsoever arising, resulting from or relating to, a breach of this clause 8.

- 8.4. Customer warrants and represents that Customer shall, and shall ensure, that its Personnel and any other persons given access to and/or use of the IaaS Services shall, use the IaaS Services for lawful purposes only and in accordance with all applicable laws and the AUP.
- 8.5. Customer warrants and represents that it has the necessary licences, certificates, authorities and consents required for the purposes of enabling BlueHat Cyber to provide all Services, including any Additional Services, under the Service Order.

9. CUSTOMER DATA

- 9.1. Without limiting the generality of each Party's rights and obligations in respect of the Customer Data:
- 9.1.1. Customer acknowledges and agrees that BlueHat Cyber has no knowledge of, nor interest in, Customer's content hosted by BlueHat Cyber, the data transmitted to and from the System, data stored on or accessed from System or any data published by BlueHat Cyber on Customer's behalf using the IaaS Services, and further that BlueHat Cyber does not in any way contribute or approve such content;
- 9.1.2. Customer acknowledges and agrees that BlueHat Cyber shall be entitled, but not obligated (other than to the extent contemplated in clause 8), to monitor Customer's use of the System so as to ensure that the System is operating properly; and
- 9.1.3. Customer hereby unconditionally and irrevocably agrees to defend, indemnify, and hold harmless BlueHat Cyber, its affiliates, and their respective officers, directors, employees, agents, representatives, contractors, successors and assignees (each an "Indemnified Party") from and against any and all claims, liabilities, losses, costs, expenses (including, without limitation, reasonable attorney's fees) and damages, of whatsoever nature and howsoever arising, which an Indemnified Party may suffer and/or incur arising out of and/or resulting from Customer's use of the IaaS Services, the hosted content or the transmission of data to and from the System, data stored on or accessed from the System or data publication using the System.
- 9.2. Upon termination of a Service Order, BlueHat Cyber may disable the relevant Services and remove all associated Customer content, including Customer Data, from the System.

10. FEES AND PAYMENT

- 10.1. Customer shall pay to BlueHat Cyber the Fees, as set out in the Service Order.
- 10.2. Unless otherwise agreed –
- 10.2.1. Fees shall, in respect of each Service, be invoiced monthly in advance. Services provided for part of a month will be charged on a pro-rata basis;
- 10.2.2. all invoices shall be paid by Customer within 30 (thirty) days of the date of such invoice;
- 10.2.3. the Fees exclude all taxes (including value-added tax and other taxes levied in any jurisdiction, but excluding taxes based on the income of BlueHat Cyber), duties (including stamp duties), tariffs, rates, levies and other governmental charges or expenses payable in respect

of the Services, which shall be payable by Customer in addition to the Fees; and

- 10.2.4. all amounts due and payable by Customer shall be paid to BlueHat Cyber in U.S. Dollars at an address and in a manner specified by BlueHat Cyber in writing from time to time, without deduction or set-off, and Customer shall not be entitled to withhold payment for any reason whatsoever.
- 10.3. Any additional services or additional support agreed between the Parties in respect of products not listed in the Service Order (which may include any additional or excess storage capacity consumed, memory capacity consumed, excess backup storage capacity consumed and additional support services) ("**Additional Services**") shall incur an additional charge at the fees for such Additional Services as set out in the Service Order or, if no such fees are set out therein, at BlueHat Cyber's Applicable Hourly Rate from time to time. Such additional fees shall be invoiced monthly in arrears and are payable within 30 (thirty) days of date of invoice.
- 10.4. Fees are subject to annual CPI escalation.
- 10.5. Any third party software or service which is separately itemized in a BlueHat Cyber Proposal, price list or invoice, shall, notwithstanding anything to the contrary contained herein, be subject to such adjustments in pricing as are effected by such third party licensor. BlueHat Cyber shall use its commercially reasonable endeavours to notify Customer of such adjustments prior to their effective date.
- 10.6. Where payment of any amount due is not made on the due date, BlueHat Cyber shall be entitled to—
- 10.6.1. charge interest on the outstanding amount at a per annum rate equal to the prime rate of interest as published by the *Wall Street Journal*, plus 1%. Interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, calculated daily and compounded monthly in arrears and Customer agrees and undertakes to pay on demand the penalty interest, which it hereby accepts as fair and reasonable; and/or
- 10.6.2. without prejudice to any other right or remedy it may have, and without any liability to Customer, suspend the provision of or access to any Services as BlueHat Cyber (in BlueHat Cyber's sole discretion) chooses until all payments in arrears, together with any accrued interest, have been paid in full. If BlueHat Cyber suspends the provision of the Services by BlueHat Cyber in accordance with the terms of the Agreement, Customer shall pay to BlueHat Cyber a reasonable administrative charge to reactivate and recommence the provision of the Services.
- 10.7. Customer shall reimburse BlueHat Cyber for any and all reasonable expenses as are properly incurred by BlueHat Cyber or BlueHat Cyber's Personnel in fulfilling BlueHat Cyber's obligations under the Agreement, provided that such expenses have been agreed to in a Service Order, or prior written approval of such expenses has been obtained from Customer. For these purposes, "reasonable expenses" mean direct costs plus a mark-up to cover expenses not directly allocated to the Services, all of which have been agreed to by the Parties.

- 10.8. In the event of it becoming necessary for BlueHat Cyber to take any steps to enforce its rights and recover any outstanding amounts owing by Customer, Customer agrees to be liable for any costs incurred in taking such steps including, without limitation, the collection fees, reasonable attorney's fees, and client scale and tracing fees.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. The Customer acknowledges that:
- 11.1.1. BlueHat Cyber has created, acquired or otherwise obtained rights in the BlueHat Cyber IP and, notwithstanding anything contained in the Agreement, BlueHat Cyber will own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the BlueHat Cyber IP; and
- 11.1.2. without limitation to the foregoing, Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of BlueHat Cyber, the BlueHat Cyber group of companies or their third-party contractors, as applicable, without the prior written consent of BlueHat Cyber, which consent can be withheld and/or withdrawn at any time and for any reason whatsoever.
- 11.2. Without limiting the generality of the foregoing, all right, title and ownership of any code, forms, algorithms, methodologies, frameworks or materials developed by or for BlueHat Cyber or Customer independently and outside of the Agreement and provided during the course of the Agreement ("**Existing Material**") shall remain the sole property of the Party providing the Existing Material.
- 11.3. All right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to any deliverable or work product (or any part thereof) created or delivered by BlueHat Cyber relating to the Services shall, unless expressly agreed to the contrary in the appropriate Service Order, vest in BlueHat Cyber.
- 11.4. To the extent that BlueHat Cyber utilizes any BlueHat Cyber IP in connection with BlueHat Cyber's performance under the Agreement, the BlueHat Cyber IP shall remain the property of BlueHat Cyber and Customer shall acquire no right or interest therein.
- 11.5. BlueHat Cyber will defend Customer against any claims made by an unaffiliated third party that any Service infringes its patent, design, copyright or trademark and will pay the amount of any resulting adverse final judgment (or settlement to which BlueHat Cyber consents). BlueHat Cyber will reimburse Customer with all costs reasonably incurred by Customer in connection with assisting BlueHat Cyber with the defense of the action. Customer shall promptly notify BlueHat Cyber of the claim in writing and BlueHat Cyber shall have sole control over its defense or settlement.
- 11.6. Should any third party succeed in its claim for the infringement of any intellectual property rights, BlueHat Cyber shall, at BlueHat Cyber's discretion and within 30 (thirty) calendar days of the infringing item having been found to so infringe:
- 11.6.1. obtain for Customer the right to continue using the infringing item or the parts which constitute the infringement;
- 11.6.2. replace the infringing item or the parts which constitute the infringement with another product which does not infringe and which in all respects operates substantially

in accordance with its specifications;

- 11.6.3. alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or
- 11.6.4. withdraw the infringing item and terminate the Service Order and, if applicable, refund to Customer all charges which Customer has already paid to BlueHat Cyber in respect of the period calculated from the date on which the claim arose until the expiration of the then current service period.
- 11.7. Notwithstanding anything to the contrary herein, BlueHat Cyber shall not be liable for any claim which arises out of goods or services selected by Customer and which are procured by Customer from third parties.

12. CONFIDENTIALITY

- 12.1. Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information which it may receive from the other Party ("**Disclosing Party**") or which becomes known to it during the currency of the Agreement and which has the necessary quality of confidentiality about it.
- 12.2. The Confidential Information of the Disclosing Party shall include—
- 12.2.1. all software and associated material and documentation, including the information contained therein;
- 12.2.2. all information relating to—
- 12.2.2.1. or belonging to the Disclosing Party;
- 12.2.2.2. the Disclosing Party's past, present and future research and development;
- 12.2.2.3. the Disclosing Party's business activities, pricing, products, services, customers, as well as the Disclosing Party's technical knowledge and trade secrets; and
- 12.2.3. the terms of the Agreement.
- 12.3. Neither Party shall disclose the contents of a Service Order to any third party without the prior written consent of the other Party.
- 12.4. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's Confidential Information —
- 12.4.1. it shall only make the Confidential Information available to those of the Receiving Party's Personnel who are actively involved in the execution of the Receiving Party's obligations under the Agreement and then only on a "need to know" basis;
- 12.4.2. it shall initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorized disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, its secret and confidential nature;
- 12.4.3. subject to the right to make the Confidential Information available to its Personnel under clause 12.4.1, it shall not at any time, whether during the Agreement or thereafter, either use any Confidential Information of the Disclosing Party or directly or indirectly disclose any Confidential Information of the Disclosing Party to third parties; and
- 12.4.4. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or shall come into the possession of the

Receiving Party and its Personnel, shall be and shall at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to the Disclosing Party when no longer required for the purposes of the Agreement.

- 12.5. Receiving Party shall, at Disclosing Party's option, destroy (including, without limitation, extracting from any computer or similar devices) or return the Confidential Information on written demand by Disclosing Party, and shall certify its compliance with this clause 12.5 to Disclosing Party upon request.
- 12.6. On termination or expiration of the Agreement, the Parties will deliver to each other or, at the other Party's option, destroy all originals and copies of Confidential Information in their possession.
- 12.7. The obligations of Receiving Party pursuant to this clause 12 shall not apply to the extent that such information:
 - 12.7.1. is known to or in the possession of Receiving Party prior to disclosure thereof by Disclosing Party, through no breach of obligations owed to Disclosing Party;
 - 12.7.2. is or becomes publicly known, otherwise than pursuant to a breach of this clause 12 by Receiving Party;
 - 12.7.3. is developed independently by Receiving Party in circumstances that do not amount to a breach of the provisions of this clause 12 and without reference to or use of the Confidential Information of Disclosing Party;
 - 12.7.4. was received by Receiving Party from a third party who is entitled to disclose same free of restriction and without obligation to Disclosing Party;
 - 12.7.5. is disclosed by Receiving Party to satisfy the order of a court of competent jurisdiction or to comply with provisions of any law in force from time to time, provided that in these circumstances, Receiving Party shall advise the Disclosing Party in writing prior to such disclosure (unless otherwise prohibited from doing so) to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard, and shall limit the extent of such disclosure.
- 12.8. The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or the Receiving Party's Personnel.
- 12.9. This clause is severable from the remainder of the Agreement and shall remain valid and binding on the Parties, notwithstanding any termination, for a period of 5 (five) years after the effective date of termination.

13. STATUTORY COMPLIANCE AND PROTECTION OF PERSONAL INFORMATION

- 13.1. The term "**Personal Information**" shall have the meaning ascribed to it in the California Consumers Privacy Act, as amended.
- 13.2. Unless required by law, in the provision of the Services or performance of any other obligation, BlueHat Cyber shall:
 - 13.2.1. process Personal Information only with the knowledge or authorization of Customer; and
 - 13.2.2. treat Personal Information which comes to its knowledge as confidential and shall not disclose it without the prior written consent of Customer.
- 13.3. In order to give effect to clause 13.2.1, BlueHat Cyber shall take reasonable measures to:
 - 13.3.1. identify all reasonable foreseeable internal and

external risks to Personal Information in its possession or under its control;

- 13.3.2. establish and maintain appropriate safeguards against the risk identified;
- 13.3.3. regularly verify that the safeguards are effectively implemented; and
- 13.3.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 13.4. The Customer acknowledges that BlueHat Cyber or its agents, by virtue of the provision of the Services, may come into possession of Customer Data. Ownership in all Customer Data whether under its control or not, shall continue to vest in Customer and BlueHat Cyber shall not obtain any proprietary rights in Customer Data. Customer grants to BlueHat Cyber (and its third-party contractors as necessary) a limited, non-exclusive, royalty free licence to use, reproduce and modify any Customer Data strictly for the purposes of providing the Services or as otherwise directed by Customer.
- 13.5. The Customer warrants that:
 - 13.5.1. it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this clause 13; and
 - 13.5.2. it shall, for the duration of a Service Order, to the extent that the Customer Data comprises Personal Information, ensure that such information is and remains accurate, relevant, up-to-date, not misleading and complete.
- 13.6. BlueHat Cyber and Customer are each responsible for complying with their respective obligations under applicable laws governing Customer Data, and each Party shall take reasonable precautions to preserve the integrity of Customer Data and to prevent any unauthorized access, corruption or loss of Customer Data.
- 13.7. The Customer acknowledges and agrees that BlueHat Cyber and its agents may, and hereby expressly authorizes BlueHat Cyber and its agents to, use, process and/or transfer Customer Data:
 - 13.7.1. in connection with the provision of Services and complying with BlueHat Cyber's obligations under these Standard Terms, any Service Terms or a Service Order;
 - 13.7.2. to incorporate Customer Data into databases controlled by BlueHat Cyber for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis; and
 - 13.7.3. to communicate to the Customer by voice, letter or email regarding products and services of BlueHat Cyber or its group of companies.
- 13.8. On either Party's reasonable written request, the other Party will provide the requesting Party with the information that it has regarding Customer Data and its processing that is necessary to enable the requesting Party to comply with its obligations under this clause and the applicable privacy, protection of personal information and access to information laws. The requesting Party will

reimburse the other Party for its reasonable charges for its assistance.

- 13.9. Customer acknowledges and agrees that, due to the nature of the Services, compliance by BlueHat Cyber with applicable laws and regulations may include the interception of Customer's communications or the examination of transmitted or stored data on the System, Customer specifically agrees that it shall have no recourse against BlueHat Cyber in the event of its compliance with such applicable laws and accordingly waives its right to make any claim or demand or to institute any legal proceedings against BlueHat Cyber. Customer hereby unconditionally and irrevocably indemnifies and holds harmless all Indemnified Parties from and against any and all claims, liabilities, losses, costs, expenses (including, without limitation, reasonable attorney's fees) and damages, of whatsoever nature and howsoever arising, which an Indemnified Party may suffer and/or incur arising out of and/or resulting from Silicon's Sky's compliance with such applicable laws.
- 13.10. On termination of the Agreement, each Party shall return to the other Party in the form in which it was received all of the other Party's data or information provided to the Party for the purpose of the performance of the Agreement.
- 13.11. Customer hereby agrees to defend, indemnify, and hold BlueHat Cyber harmless from any and all claims, damages, penalties, fines, or costs (including, but not limited to, reasonable attorney's fees) in any way arising from Customer's failure to comply with its obligations under this clause 13.

14. WARRANTIES

- 14.1. Each Party warrants and represents that it has full capacity and authority to enter into and comply with each Service Order and this Agreement.
- 14.2. BlueHat Cyber warrants and represents it shall perform its obligations under these Standard Terms and the Service Order with due skill, care and diligence.
- 14.3. No warranties, guarantees or representations, whether express or implied, regarding the availability, security, reliability, quality, merchantability, fitness for purpose, title or non-infringement of intellectual property rights of the Services and System or any other warranty, guarantee or representation not set out in this Agreement shall be binding upon BlueHat Cyber and are hereby expressly excluded.

15. BREACH

- 15.1. An event of default shall occur if:
- 15.1.1. Customer fails to pay any Fees or other amount owing by it to BlueHat Cyber in full on due date and such failure is not remedied within 5 (five) days of receipt of written notice requiring it to do so;
- 15.1.2. Customer fails to make payment of any Fees or other amount owing by it to BlueHat Cyber timeously more than twice in any rolling 6 (six) month period;
- 15.1.3. a Party commits any other breach of this Agreement and fails to remedy that breach within a period of 14 (fourteen) days after receipt of written notice requiring it to do so;
- 15.1.4. a Party effects, or attempts to effect, a compromise or composition with its creditors;
- 15.1.5. a Party defaults or threatens to default in payment of its liabilities generally, or ceases or threatens to cease to carry on business;

- 15.1.6. a Party becomes insolvent; or
- 15.1.7. a Party is liquidated and/or dissolved.
- 15.2. If an event of default (as provided for in clause 15.1) occurs, the non-defaulting Party shall, without prejudice to any other rights that it may have under the Agreement or in law, be entitled to terminate the Service Order(s) to which the default relates, and/or claim immediate specific performance of all of the defaulting Party's obligations, in either event without prejudice to its rights to claim damages.
- 15.3. On termination of any Service Order for any reason, all amounts due to BlueHat Cyber under such Service Order (up until the date of expiration of such Service Order), shall become due and payable even if they have not been invoiced. For the avoidance of doubt, if any Service Order is terminated prior to the expiration of the then-current term, for any reason other than an event of default by BlueHat Cyber, then Customer shall be liable for and shall pay all charges that would have become due and payable under such Service Order until the expiration of the then-current term. The amounts may not be withheld for any reason.

16. EFFECT OF TERMINATION AND TERMINATION ASSISTANCE

- 16.1. Upon expiration or termination of any Service Order, BlueHat Cyber shall not be required to maintain or store, and may delete, any and all Customer content (including Customer Data) hosted or stored in connection with the terminated Services, unless otherwise agreed in the applicable Service Terms or Service Order.
- 16.2. Upon termination of a Service Order, subject to payment by Customer of all amounts due and payable to BlueHat Cyber, BlueHat Cyber shall render such reasonable assistance to Customer so as to enable Customer to migrate any Services affected by such termination to a service provider of Customer's choice. Any and all costs associated for the migration of the Services shall be at the Customer's sole cost and expense.
- 16.3. All Dedicated Infrastructure will immediately be returned to BlueHat Cyber at Customer's costs.
- 16.4. Without prejudice to accrued rights or obligations, upon termination of a Service Order due to a breach of the Customer, BlueHat Cyber shall be entitled, but not obliged, to immediately terminate all or any existing Service Orders and accompanying services, including all the Customer's rights under such Service Orders in writing, without any liability to the Customer.

17. LIMITATION OF LIABILITY

- 17.1. BlueHat Cyber's maximum liability under or in connection with the Agreement shall be limited to the aggregate amount of all the fees paid by Customer to BlueHat Cyber, in respect of the Service Order under which such claim arose, during the preceding 6 (six) month period.
- 17.2. Neither Party shall be liable for any indirect, special or consequential damages and/or losses of any kind whatsoever, including loss of data, loss of business or for loss of profits, revenue or anticipated savings howsoever arising, suffered by the other Party and arising in any way in connection with the Agreement, or the termination thereof, whether in whole or in part.
- 17.3. The limitations contained in this clause 17 shall not apply to (i) any breach by a Party of the other Party's proprietary or confidential information or intellectual property; (ii) any loss of or damage to any property or injury to or death of any person which arises from a

Party's gross negligence; or (iii) damages arising from a Party's willful misconduct (including theft, fraud or other criminal act).

- 17.4. The above limitations and exclusions of liability shall apply regardless of the form of action, whether in law or equity, and regardless of whether a Party has been advised as to the possibility of such claims, losses or damages.
- 17.5. BlueHat Cyber shall not be liable for any claim which arises out of (i) services selected by Customer and which are procured by Customer from third parties; or (ii) service interruptions, accidents or any operational aspect of Customer.
- 17.6. This clause 17 shall survive termination of the Agreement.

18. FORCE MAJEURE

- 18.1. BlueHat Cyber shall not be liable in any way for liabilities, losses, costs, expenses and/or damages arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards Customer caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures, orders or judgments of any court, natural disasters, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labor or raw materials, lack of or failure of transportation, breakdown of machinery and non-delivery or delay by third party service providers or suppliers ("**Force Majeure**").
- 18.2. Upon the occurrence of any event of Force Majeure, BlueHat Cyber shall promptly inform Customer by written notice thereof specifying the cause of the event and how it shall affect its performance of its obligations. Should a Force Majeure event continue or be expected to continue for a period exceeding 60 (sixty) days, either Party shall be entitled to cancel the affected Service Order without any liability to the other Party.

19. NOTICES AND DOMICILE

- 19.1. All notices, authorizations and requests given or made in connection with this Agreement must be sent by e-mail to the e-mail addresses set out on the cover sheet of the Agreement. By providing such contact information, each Party consents to its use for purposes of administering the Agreement by the other Party and other parties that help a Party administer the Agreement.
- 19.2. The Parties record that, during the currency of the Agreement for operational reasons, formal notice required in terms of this Agreement, and any amendment or variation to this Agreement may be given or concluded via e-mail.
- 19.3. Each Party chooses its domicile for the purpose of being served summons and execution levied for all purposes the physical address specified for the Party as set out on the Service Order, failing which the accepted Proposal.
- 19.4. Each Party may by giving written notice to the other Party, change the addresses and numbers set out on the cover sheet of the Agreement to any addresses and numbers in the United States, provided that the change shall only take effect 14 (fourteen) calendar days after delivery of the written notice.
- 19.5. Notice shall be deemed to have been given—
- 19.5.1. if delivered by hand to a responsible person during business hours to the designated physical address, on

the date of delivery;

- 19.5.2. if sent by e-mail during business hours to the designated e-mail address, on the date of successful transmission.
- 19.6. If a notice or communication is actually received by a Party, adequate notice or communication shall have been given, notwithstanding any non-compliance with this clause 19.

20. RELATIONSHIP BETWEEN THE PARTIES

- 20.1. Notwithstanding anything to the contrary contained in the Agreement, whether express or implied, each Party enters into the Agreement as an independent contractor. The Agreement does not create any other relationship, including employment, partnership, agency, trust or joint venture relationship.
- 20.2. Nothing in the Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.
- 20.3. The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to the standard.

21. NON-EXCLUSIVITY

Nothing in the Agreement shall be construed as precluding or limiting in any way the right of BlueHat Cyber to render services of any kind or nature to any person or entity as BlueHat Cyber in its sole discretion deems appropriate. BlueHat Cyber may employ, modify, disclose, and otherwise exploit BlueHat Cyber's IP (including providing services or creating programming or materials for other customers or itself, providing services which are competitive with the Services, irrespective of their similarity to the Services), subject to the provisions of the confidentiality provisions of the Agreement.

22. ANTI-BRIBERY AND CORRUPTION

The Parties warrant that they shall, at all times during the course of the Agreement, fully comply with all applicable anti-corruption laws and all other corruption laws that may be applicable to their operations under the Agreement. The Parties acknowledge their understanding of the applicable anti-corruption laws and without limitation, as it relates to the Agreement, that they shall not offer, make or accept a payment or anything of value from any person that is intended to improperly influence that person's authority that would violate such anti-corruption laws.

23. GENERAL

- 23.1. No amendment or modification to the Agreement shall be effective unless in writing and physically signed by authorized signatories of the Parties in paper form.
- 23.2. Customer hereby agrees that BlueHat Cyber may include Customer's name in its published lists of customers.
- 23.3. If any provision of the Agreement shall be held illegal or unenforceable, such provision shall be severable and shall in no way affect or impair the validity or enforceability of the remaining provisions of the Agreement.
- 23.4. Neither Party shall cede, assign, delegate or otherwise transfer the rights and/or obligations of all or any part of the Agreement, other than a cession or assignment by BlueHat Cyber to any of its affiliates, without the prior consent of the other Party, which consent shall not be

unreasonably withheld. Notwithstanding the above, BlueHat Cyber may appoint subcontractors to provide all or any part of the Services but shall remain liable for the performance of the Services by such subcontractor.

- 23.5. Termination of a Service Order, for whatsoever reason, shall not affect the provisions of the Agreement, which are intended to continue to have effect after such termination.
- 23.6. The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of the Agreement.
- 23.7. Each Service Order incorporating these Standard Terms and the relevant Service Terms shall form a separate Agreement between the Parties and shall constitute the entire agreement between the Parties regarding the subject matter thereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not stated in the Agreement.
- 23.8. No waiver, indulgence, extension of time or abandonment by either Party of any of its rights shall be binding on that Party, unless such waiver, indulgence, extension of time or abandonment is in writing and signed by the duly authorized representative of the waiving Party.
- 23.9. The Agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by email or facsimile delivery of signature pages (and the Parties will follow such delivery by prompt delivery of originals of such pages).
- 23.10. The Parties' rights and obligations arising out of or in connection with the Agreement shall be governed, construed, interpreted and enforced according to the laws of the State of Michigan, without regard to any conflict of laws principles. All actions and proceedings arising out of or relating to this Agreement shall be exclusively heard and determined in any state or federal court of competent jurisdiction located in Kent County, Michigan. The Parties hereby consent to such jurisdiction of such courts.

SERVICE SCHEDULE

1. CUSTOMER RESPONSIBILITIES

Customer shall not provide access to the System to any unauthorized persons, as stipulated in the Agreement, and shall comply with all statutory or regulatory restrictions which may be applicable to Customer in utilizing the System or any information or data in relation to BlueHat Cyber.

2. SECURITY

- 2.1 BlueHat Cyber implements security measures commensurate with good industry practice in respect of the System.
- 2.2 If an unauthorized person attempts to gain, or gains, access to the System or if there is any other security violation, or if Customer reasonably considers there to be a potential security violation, it shall immediately notify BlueHat Cyber.
- 2.3 In the event of a security violation, or if BlueHat Cyber, in its sole discretion, determines that there is a potential security violation, BlueHat Cyber may take whatever steps it deems necessary to protect the System, including without limitation:
 - 2.3.1 changing access codes and passwords; and
 - 2.3.2 preventing access to the System.
- 2.4 Customer shall give reasonable cooperation to BlueHat Cyber in any investigation which may be carried out by BlueHat Cyber relating to a security violation or potential security violation.
- 2.5 Customer shall take all reasonable measures necessary to ensure that no unlawful or unauthorized access is gained to the System.
- 2.6 If anti-virus software is listed in the Service Order, BlueHat Cyber will endeavour to ensure anti-virus software is up to date, however BlueHat Cyber shall not be liable for any liabilities, losses, costs, expenses and/or damages suffered and/or incurred by Customer arising out of a virus.
- 2.7 BlueHat Cyber shall not be liable for any liabilities, losses, costs, expenses and/or damages suffered and/or incurred by Customer arising out of a breach of security in respect of the System.
- 2.8 Customer hereby unconditionally and irrevocably agrees to indemnify, defend, and hold harmless BlueHat Cyber, its affiliates, and their respective officers, directors, members, managers, employees, agents, representatives, contractors, successors and assignees (each an "**Indemnified Party**") from and against any and all claims, liabilities, losses, costs, expenses (including, without limitation, reasonable attorney's fees) and damages, of whatsoever nature and howsoever arising, which an Indemnified Party may suffer and/or incur arising out of and/or resulting from any breach of security of the System caused by the acts or omissions of Customer.

3. SERVICES

- 3.1 Unless otherwise stated in the Service Order, all IaaS Services shall be rendered from a primary location only, and shall specifically exclude:
 - 3.1.1 on-site support;
 - 3.1.2 application licensing;
 - 3.1.3 application support;
 - 3.1.4 off-site backups (i.e. backups at a secondary location); and
 - 3.1.5 replication / disaster recovery of services to a secondary location.
- 3.2 BlueHat Cyber may modify the IaaS Services (including, without limitation, modifications to the software and other elements of the System) at any time, without prior notice, provided the modification does not materially denigrate the functionality of the IaaS Services. Customer acknowledges and agrees that BlueHat Cyber may elect to host the System in a third-party data center.
- 3.3 Customer agrees to comply with the acceptable use policies (from time to time) of the BlueHat Cyber data center in which the System is hosted, which policies shall be made available to Customer upon request.
- 3.4 Cloud Backups are kept at the same location as Cloud Servers/Virtual Servers and/or Virtual Data Centers unless specified otherwise in the Service Order. Nothing contained in these Service Terms or a Service Order shall be construed as a representation that any backups of data implemented, by BlueHat Cyber, shall be successful or of any restoration times. BlueHat Cyber schedules backups to run once a day and after hours. BlueHat Cyber monitors backups daily and in the event of a backup job failing, BlueHat Cyber will endeavour to rectify the backup in the next backup job run. Customer is responsible for management and monitoring of backups when self service backups are enabled as set out in the Service Order. For the avoidance of doubt, in no event shall BlueHat Cyber be liable for any loss or destruction of Customer's data of any nature whatsoever, and howsoever arising.
- 3.5 Cloud Backup retention period is set to 7 days unless specified otherwise in the Service Order. Customized retention are available however retentions longer than 7 days may incur excess backups storage costs, based on allocation. Self service backup retention is set by customer and customer is liable for associated costs as set out in the Service Order.
- 3.6 Backup and Replication Management for on premise or customer hosted servers default retention is as set out in the Service Order. Nothing contained in these Service Terms or a Service Order shall be construed as a representation that any backups or replica's of data implemented, by BlueHat Cyber, shall be successful or of any restoration times. BlueHat Cyber schedules backups and replica's according to the schedule as set out in the Service Order. BlueHat Cyber monitors backups/replica's daily and in the event of a backup/replica job failing, BlueHat Cyber will endeavour to rectify the backup/replica in the next backup/replication job run. For the avoidance of doubt, in no event shall BlueHat Cyber be liable for any loss or destruction of Customer's data of any nature whatsoever, and howsoever arising
- 3.7 Backup and or Replication Management inclusions is as listed in the Service Order.
- 3.8 Cloud Server vCPU, vRAM and vStorage is based on an allocated amount and invoiced accordingly.

- 3.9 Virtual Data Centers are based on an allocation of compute resources namely CPU vGhz, vRAM and vStorage unless otherwise specified and invoiced accordingly.
- 3.10 Virtual Data Center vStorage is based on All Flash performance storage or hard drives (7.2K, 10K, and 15K) or solid state drives (SSD) as set out in the Service Order.
- 3.11 GPU Enabled Virtual Data Centers are based on an allocation of compute resources namely CPU vGhz, vRAM GPU, vRAM and vStorage unless otherwise specified and invoiced accordingly.
- 3.12 Customer acknowledges and agrees that Cloud/Virtual Servers within Virtual Data Centers include self service management and customer is responsible for the management thereof. Customer is responsible to keep VMtools up to date for best performance and compatibility.
- 3.13 Customer acknowledges and agrees that networking and security management within Virtual Data Centers includes self service management and customer is responsible for the management thereof unless specified otherwise in the Service Order.
- 3.14 Cloud Server Storage and Cloud Storage are based on allocated capacity and invoiced accordingly.
- 3.15 Cloud Server is based on hard drives (10K), solid state drives (SSD) or All Flash performance as set out in the Service Order.
- 3.16 Cloud Storage is based on hard drives (7.2K, 10K, and 15K) or solid state drives (SSD) as set out in the Service Order.
- 3.17 Cloud File Storage is based on hard drives (7.2K or 10K) or as set out in the Service Order.
- 3.18 Cloud Block Storage is based on all flash performance or as set out in the Service Order.
- 3.19 Cold Standby Virtual Data Centers Cloud/Virtual Servers can be powered on for a maximum of 15 days per month or as set out in the Service Order. Cloud/Virtual Servers powered on for longer than 15 days will be invoiced as a live Virtual Data Center.
- 3.20 Cold Standby Virtual Data Centers / Cloud/Virtual Servers restore points is as listed in the Service Order.
- 3.21 DRaaS / Virtual Data Center Cold Standby includes self service replication (vCloud Director Availability) and customer is responsible for the management thereof unless otherwise specified in the Service Order.
- 3.22 Customer acknowledges and agrees that it remains their responsibility to periodically test Virtual Data Centers Cloud/Virtual Servers that are utilized as failover or disaster recovery servers. BlueHat Cyber will not be held responsible for out of date software, patches, application versions etc.
- 3.23 Dedicated Infrastructure compute, network and storage resources are set out in the Service Order. In the event of additional resources being required the relevant upgrades or additional Dedicated Infrastructure will need to be quoted and the Service Order updated upon acceptance by Customer.
- 3.24 Dedicated Infrastructure, infrastructure licensing namely VMware and/or Microsoft is set-out in the Service Order. In the event of additional licenses being required the relevant licenses will need to be quoted and the Service Order updated upon acceptance by Customer.
- 3.25 Dedicated Infrastructure Storage as a Service is based on allocated capacity with RAID 5 or 6 configured in the underlying storage system, with the minimum monthly commitment on allocated capacity as set out in the Service Order.
- 3.26 Dedicated Infrastructure Storage as a Service is managed and maintained by BlueHat Cyber with the relevant support as set out in 1.8. The management and maintenance is of the underlying storage system only and does not include storage switches and servers/hosts unless specified in the Service Order. Customer is required to manage storage and data at the server/host level. Customer does not get access to the underlying storage system.
- 3.27 Customer agrees that on-premises Dedicated Infrastructure provided by BlueHat Cyber will be housed in a secure data Center with redundant power through UPS's, sufficient cooling, secure physical access, fire suppression system and CCTV security surveillance. Customer agrees to provide BlueHat Cyber physical access to the dedicated infrastructure when needed. Customer agrees to provide remote access to Customers network to access the dedicated infrastructure.
- 3.28 VMware vSphere Management for Dedicated Infrastructure includes MACD's of vSphere as/if set out in the Service Order.
- 3.29 Virtual Machine Management for Dedicated Infrastructure includes the status monitoring of the virtual machine and MACD's relating to the Virtual Machine at a hypervisor level for dedicated Infrastructure as/if set out in the Service Order.
- 3.30 Hardware Monitoring includes hardware component up/down status monitoring of the Dedicated Infrastructure as/if set out in the Service Order. Network access to the hardware is required for this service.
- 3.31 Hardware management for Dedicated Infrastructure includes the management of the hardware components as listed in the Service Order. Hardware management excludes hypervisor and or operating system management. Network access to the hardware is required for this service.
- 3.32 Firewall Management for Shared Firewall – VDOM (Virtual Domain) and Dedicated Firewalls as listed in the Service Order includes hardware monitoring, firmware updates when needed, firewall configuration management, firewall policy management and MACD's as and when needed.
- 3.33 Virtual Firewall Appliance is as listed in the Service Order.
- 3.34 Firewall Logging service includes a limited amount of logs per days, a limited retention period for live and archived logs as set out in the Service Order.
- 3.35 Operating System Management includes Operating System Monitoring of CPU, RAM and Storage, Operating System Patch updates as agreed with Customer Schedules and Operating System related MACDs as/if specified in the Service Order.
- 3.36 Operating System Monitoring includes Operating System Monitoring for CPU, RAM and storage with threshold alerts as set out in the Service Order.

- 3.37 Maximum of 5 IPsec (Internet Protocol Security) tunnels, 5 VLANs (Virtual Local Area Network) and 20 VPN (Virtual Private Network) users for the shared firewall service.
- 3.38 Customer is responsible for security management, patch management, operating system management, Anti-Virus etc on their Cloud/Virtual Servers in Virtual Data Centers or Dedicated Infrastructure unless specified otherwise in the Service Order.
- 3.39 Internet Access - Unlimited Internet Traffic is based on a shared Internet Link with no throughput guarantees. BlueHat Cyber uses commercially reasonable efforts to ensure the shared Internet Link is not saturated.
- 3.40 Application Delivery Controller / Web Application Firewall supports a limited number of servers and connections as set out in the Service Order.
- 3.41 Dedicated Internet Access is based on a per Mbps throughput as set out in the Service Order.
- 3.42 Regional Backhaul is based on a per Mbps throughput as set out in the Service Order.
- 3.43 Where on-site support is required, such support shall be charged at the Applicable Hourly Rate and shall be included in Customer's following month's invoice
- 3.44 BlueHat Cyber shall not be responsible or liable for providing or procuring access from Customer's system to the System, including—
- 3.44.1 Internet access, telecommunications, security satellite or other infrastructure required to access the System; or
- 3.44.2 any interface or integration with any existing BlueHat Cyber or Customer system. Where any interface or integration is identified, the interface or integration or any related services will be considered other services and will be dealt with under a separate Service Order.
- 3.45 The Services do not include any services in connection with the compilation, creation, conversion or migration of Customer Data or test Customer Data.
- 3.46 Any delay or failure by Customer to provide any information, details or equipment as required in the Service Order to enable BlueHat Cyber to provide the Services may result in additional charges.
- 4. DOWNTIME AND MAINTENANCE**
- 4.1 BlueHat Cyber shall be entitled to conduct planned maintenance on the System on a quarterly basis for a maximum period of 8 (eight) hours. In order to conduct such maintenance, planned downtime is required. Customer shall be notified of this planned downtime at least 7 (seven) days in advance, where possible. BlueHat Cyber shall use reasonable commercial endeavours to ensure that any planned downtime resulting from such maintenance occurs outside of normal business hours, being 8am to 5pm Monday to Friday excluding public holidays.
- 4.2 BlueHat Cyber is furthermore entitled to immediately suspend the provision of the IaaS Services, or any part thereof, without any liability to Customer:
- 4.2.1 in order for BlueHat Cyber to repair, maintain, upgrade, modify, replace or improve the System and/or IaaS Services, including without limitation, in order to maintain the security of the System, provided that the period of suspension shall be that which is reasonable under the particular circumstances;
- 4.2.2 as a result of Customer's act or omission or an act or omission of a third party for which Customer is responsible, including failure to supply accurate, complete, and timely information when requested;
- 4.2.3 if the necessary technology or other resources are unavailable on commercially reasonable terms;
- 4.2.4 if there are any issues including configuration issues with any operating system, database, application, network, hardware, infrastructure, or other code or materials not provided by BlueHat Cyber;
- 4.2.5 in order to comply with any applicable law or requests of governmental entities, in each case that adversely affects BlueHat Cyber's ability to provide the IaaS Services;
- 4.2.6 where Customer has not made payment of monies owing to BlueHat Cyber by due date up until such time as all arrear amounts, including any interest thereon, is paid in full;
- 4.2.7 where BlueHat Cyber has reasonable grounds to believe that the Customer is or has been involved or connected with criminal activity or other activity, which is or may be detrimental to BlueHat Cyber, its third party contractors or its customers;
- 4.2.8 where BlueHat Cyber has reasonable grounds to believe that Customer has provided it with false information prior to or upon entering into the Agreement, or that it lacked the capacity to enter into the Agreement;
- 4.2.9 where BlueHat Cyber has reasonable grounds to believe that the security or functionality of the IaaS Services or any component thereof are under a significant threat;
- 4.2.10 where BlueHat Cyber has reasonable grounds to consider that it is entitled to terminate the Service Order, or that Customer has committed a breach of the Agreement or the AUP;
- 4.2.11 where BlueHat Cyber has reasonable grounds to believe that the IaaS Services are being used fraudulently or illegally or in violation of the Agreement or the AUP; or
- 4.2.12 where BlueHat Cyber is obliged to comply with an order, instruction or request of a court, government agency, emergency service organization or other administrative or regulatory authority.
- 4.3 Notwithstanding anything to the contrary contained in the Agreement, and for the avoidance of doubt, BlueHat Cyber will not be liable or responsible for any Downtime caused by one or more of the following:
- 4.3.1 any maintenance, suspension, or termination of the IaaS Services, whether in whole or in part, in accordance with the provisions of the Agreement;
- 4.3.2 the failure of servers or services outside of a Data Center on which the IaaS Services are dependent, including, but not limited to,

- inaccessibility of the Internet that is not caused by BlueHat Cyber's infrastructure;
- 4.3.3 an attack on BlueHat Cyber's infrastructure, including a denial of service attack or unauthorized access, provided that BlueHat Cyber has implemented and upheld reasonable security measures to prevent such attacks;
 - 4.3.4 unavailability that results from the failure of Customer's equipment or any hardware, software, equipment, service or facilities not provided by BlueHat Cyber;
 - 4.3.5 any unavailability caused by a failure by Customer to timely implement configurations to the IaaS Services required by BlueHat Cyber, or due to any configuration performed by Customer and not approved by BlueHat Cyber; or
 - 4.3.6 any unavailability caused by Customer's breach of the Agreement or the AUP.
- 4.4 BlueHat Cyber is entitled to suspend IaaS Services as set out in this clause immediately and without notice, provided that BlueHat Cyber shall use reasonable commercial endeavours to notify Customer of any such suspension.
- 4.5 Notwithstanding the foregoing, Customer acknowledges that circumstances may arise from time to time that require BlueHat Cyber to perform Emergency Works. In such cases, BlueHat Cyber shall endeavour to inform Customer as soon as possible of this requirement and the planned suspension of the IaaS Services. Notwithstanding the foregoing, however, the Parties acknowledge and agree that BlueHat Cyber may, acting reasonably, perform the Emergency Works without prior notice to Customer, provided that BlueHat Cyber shall notify Customer of such Emergency Works and suspension of the IaaS Services as soon as reasonably possible. Customer acknowledges and agrees that BlueHat Cyber shall not be held liable for any liabilities, losses, costs, expenses and/or damages suffered and/or incurred as a result of any such suspension, planned downtime or Downtime.
- 4.6 For the purposes hereof:
- 4.6.1 **"Downtime"** is determined by BlueHat Cyber, and is the time during which the System is not capable of being accessed or used by Customer for reasons other than its own or that of its users. Downtime does not include: (i) Service unavailability caused by maintenance of the System; (ii) Service unavailability caused by events outside the reasonable control of BlueHat Cyber or its subcontractors, service providers or suppliers and includes without limitation the failure or unavailability of Customer's facilities or systems such as internet connectivity, any other service or third-party used by Customer to use, connect to, or access the IaaS Service; (iv) any failure by Customer to comply with BlueHat Cyber's reasonable instructions in relation to the IaaS Service; and/or (v) compliance with applicable laws or requests of governmental entities; and
 - 4.6.2 **"Emergency Works"** means works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (i) danger to persons or property; (ii) the interruption of any service provided or generated by a third party; (iii) substantial loss to BlueHat Cyber or any third party; (iv) a violation of applicable laws; and such other works as BlueHat Cyber deems appropriate in the circumstances, acting reasonably, for the preservation of the IaaS Services.

5. THE SERVICE LEVELS

- 5.1 BlueHat Cyber will use all commercially reasonable efforts to make the System available 24 (twenty-four) hours per day, 7 (seven) days per week and 365 (three hundred and sixty five) days of each year.
- 5.2 Unless otherwise specifically agreed in the Service Order, the IaaS Services includes the following Support Services:
- 5.2.1 1 hour response to services requests/tickets logged between 7am to 7pm Monday to Friday;
 - 5.2.2 2 hour response to services requests/tickets after hours logged between 7pm to 7am;
 - 5.2.3 MACDs (move, add, change, de-install), which are available from 7am to 7pm; and
 - 5.2.4 Restorations from backups, which are available from 7am to 7pm.
- 5.3 BlueHat Cyber shall use its commercially reasonable endeavours to make its IaaS Services available to Customer and to maintain the Availability thereof for use by Customer. However, the IaaS Services are provided "as is" and "as available". Factors that affect service delivery include, without limitation, last mile connectivity, bandwidth availability, shaping and other circumstances that are beyond BlueHat Cyber's control.
- 5.4 In the event of Downtime during any particular month that is caused by BlueHat Cyber, BlueHat Cyber shall, to the extent agreed to in a Service Order, pass a service level credit to Customer on the following month's invoice. The service level credit shall be in the form of a credit on the amount payable by Customer in terms of such invoice, and shall be equal to the percentage of Downtime experienced relative to the Monthly Availability Percentage for the appropriate service as listed in the Service Order, limited to a maximum of 50% (fifty percent), and shall exclude VAT.
- 5.5 Customer agrees that any service level credit passed in terms hereof shall be considered a genuine pre-estimate of Customer's damages, shall be Customer's exclusive remedy in the event of Downtime and BlueHat Cyber shall not be liable for any further damages whatsoever.
- 5.6 For the purposes hereof:
- 5.6.1 **"Availability"** means a Monthly Availability Percentage of 99.95% for Virtual Data Centers, 99.95% for Cold-Standby Virtual Data Centers, 99.95% for Dedicated Virtual Data Centers (Availability percentage for Virtual Data Centers is for the underlying infrastructure only and not the individual virtual servers within the Virtual Data Center), 99.95% for Shared Firewall Service, 99.95% for Shared Firewall-VDOM, 99.5% for Firewall Logging Service, 99.95% for Shared Internet Access, 99.95% for Dedicated Internet Access, 99.95% for regional backhaul, 99.0% for Cloud Backup Storage, 99.0% for Cloud Storage, 99.5% for Cloud File Storage, 99.95% for Cloud Object Storage, 99.99% for Cloud Block Storage, 99.9% for cloud consoles (e.g. cloud.siliconsky.com), 99.0% for non redundant Application Delivery Controller/ Web Application Firewall, 99.95% for Redundant Application Delivery Controller Web Application Firewall, 99.999% for power availability for Co-located Rack Space. No availability Percentage for non-redundant dedicated infrastructure. Dedicated Infrastructure is based on bespoke configurations and is dependent on a redundant solution design. In the event of customer managing Dedicated Infrastructure no uptime

Availability percentage is applicable. Availability percentage for on-premises Dedicated Infrastructure is dependent on the facility where it is hosted and thus cannot be guaranteed, same being provided on a reasonable endeavours basis only; and

- 5.6.2 **“Monthly Availability Percentage”** means the total number of minutes in an average month (being, 43,800 minutes) multiplied by the Availability percentage, minus the number of minutes of Downtime, divided by the total number of minutes in an average month.
- 5.7 BlueHat Cyber shall not be responsible or liable for—
- 5.7.1 the maintenance of Customer’s equipment, operating system and infrastructure, including operational support and maintenance of third party software;
 - 5.7.2 providing support directly to users, which shall include telephone support directly to users;
 - 5.7.3 the maintenance of any system other than the System;
 - 5.7.4 the correction of defects caused by the use of the System by Customer in an incorrect manner;
 - 5.7.5 the correction of defects caused by the use of the programs and applications not compatible with the System;
 - 5.7.6 the training of Customer Personnel;
 - 5.7.7 the correction of errors caused by a defect in Customer’s equipment; or
 - 5.7.8 the diagnosis or correction of errors arising in Customer’s system.
- 5.8 The Support Services do not include any services in connection with the compilation, creation, conversion or migration of Customer Data or test Customer Data.
- 5.9 If the Customer modifies, makes any adaptation or unauthorized reproduction of the System in any way without BlueHat Cyber’s prior written authorisation BlueHat Cyber will be entitled, without prejudice to its rights, to either forthwith terminate the relevant Service Order or to continue providing the Support Services but on terms and at such fees and charges as may be determined by BlueHat Cyber. If BlueHat Cyber terminates a Service Order as aforesaid, the Customer shall not be entitled to the refund of any Fees or other charges paid by the Customer.