



# Blink Ops Terms of Service

## 1. Terms of Service

These terms of Service between you ("you") and Blink Operations Inc. and its affiliates ("Blink") and the corresponding purchase order (as may be executed between Blink and you from time to time) (collectively, the "agreement") constitute a binding agreement between you and Blink and govern your use of the services.

## 2. Acceptance of Terms

The Blink proprietary SaaS platform is offered to you as an intelligent development platform that extends a toolset and interface of applications and cloud environments. Applications on the platform are offered by Blink and its community of users, all for the purpose of enabling users of the platform to build sophisticated tools for their cloud operations.

By choosing "I accept", executing a purchase order, or otherwise by using the Services, you are accepting and agreeing to be bound by all the terms of this agreement, which acceptance date shall be deemed the Effective Date of this Agreement.

## 3. Subscription to the Services

**1. Creating an Account.** In order to use the Services, you have to create an account ("**Account**"). You agree to (i) provide accurate and complete Account and login information; (ii) keep, and ensure that Authorized Users keep, all Account login details and passwords secure at all times; (iii) remain solely responsible for the activity that occurs in your Account including with respect of your Authorized Users; and (iv) promptly notify Blink of any unauthorized access or use of the Account or the Service. Blink will not be liable for any loss that you may incur as a result of unauthorized use of the Account. You will not allow the use and access to the Services by third parties or anyone other than the Authorized Users.

**2. Use of the Services.** Subject to the terms and conditions of this Agreement (including payment in full of applicable fees) and for the Subscription Term, Blink hereby grants you a limited, revocable, personal, non-transferable, non-assignable, non-exclusive, non-sublicensable license to access and use the Services, solely for internal business purposes, all in accordance with the license scope set forth under the Purchase Order. If you wish to add Authorized Users or increase the scope of use, you may purchase additional licenses for Authorized Users which will become applicable for the remainder of your subscription period.

**3. Restrictions on Use.** The Services shall be accessed in accordance with their intended purpose and as detailed in the Blink website, documentation, or by any other written instructions of Blink. Except as expressly permitted by this Agreement, you may not, nor permit anyone else to, directly or indirectly: (i) copy, modify, translate, create derivative works of the Services; (ii) decompile, reverse engineer or disassemble the Services and/or any components thereof or otherwise attempt to obtain or have access to the source code for the Services; (iii) give, sell, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Services to any third party, including, but not limited to your Affiliates, or use the Services in any service bureau arrangement; (iv) circumvent, disable or ties have signed and entered into in respect of the Services.



otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Services; (v) use any robot, spider, scraper, or other automated means to access the Services for any purpose; (vi) transmit or upload any viruses, spyware or other harmful, infringing or illegal content; (vii) use the Services to develop a competing service or product, and any use by a competitor of Blink shall be prohibited; (viii) export or re-export the Services or underlying information or technology (a) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Lebanon, Iran, Syria or any other country to which the U.S. and/or Israel has embargoed goods and services; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders and/or (ix) use the Services in any unlawful manner or in breach of this Agreement. Any right not explicitly granted to you is reserved to Blink or its licensors.

## 4. Changes to Services

We may add, enhance, upgrade, modify or discontinue any functionality, feature or tool available through the Services in our discretion without further notice. If Blink makes any material adverse change in the core functionality of the Services, then Blink will notify you by posting an announcement on the Blink website or via the Services or by sending you an email in accordance with the details provided in your Account.

## 5. Support and Maintenance

Blink offers maintenance and support services to you as part of its Premium Subscription. Subject to payment of applicable fees, Blink will maintain and support the Services in accordance with the Service Level Agreement available through the Blink website, as amended from time to time (the "SLA"). Please note that different service levels may be applied by Blink with respect to various packages available as part of the Premium Subscriptions.

## 6. Fees and Payment

1. **Fees.** The Basic Subscription is provided to you at no cost, subject to Blink's discretion. The Premium Subscription is subject to payment of applicable fees. You will pay Blink the service and support fees for the licensing package as set forth in Blink's then in-effect price list (found on the Blink website or in the Purchase Order) (the "Fee"). All fees are non-refundable. Please note that separate terms and conditions of third-party payment processors may apply to the payment of any applicable Fees.
2. **Billing.** Unless specified otherwise, (a) you will be invoiced for the Fees upon execution of this Agreement, and upon the renewal of any Subscription Term and (b) payment is due and shall be made within thirty (30) days after the date of the purchase order or the end of the applicable Subscription Term, and (c) all amount payable hereunder shall be paid in United States Dollars. All amounts not paid within fifteen (15) days of the due date shall bear interest at the rate of one percent (1.5%) per month and in any case no more than 10% in the aggregate, or at the highest rate allowed by law, whichever is less, from the date due.
3. **Taxes.** Prices are exclusive of all taxes of any nature. You will be responsible to pay all applicable taxes, including all sales, use, value added, withholding or other taxes and fees, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, except for taxes based on Blink's net income.



## 7. Representations and Warranties

**Your Warranties.** You represent that you will use the Services only in accordance with applicable law, shall not use the services to transmit or view any Content, information or material that infringes the intellectual property, moral, publicity or privacy rights of any third party. You further represent and warrant that you have full authority to provide Blink with the information it requires including the personal information, and that the access and use of the Services will not violate any other contractual or other legal obligations which you are subject to and which Blink does not have knowledge of. You further represent and warrant that you are at least 18 years old and, if entering into this Agreement on behalf of an employer or other legal entity it is representing, that you have full authority to bind said employer or other legal entity to this Agreement.

## 8. Disclaimer

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT ANY OTHER WARRANTY. BLINK EXPRESSLY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, NON-INTERFERENCE, SECURITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. THE ENTIRE RISK ARISING OUT OF THE USE OF THE SERVICES REMAINS WITH YOU. BLINK DOES NOT WARRANT THAT THE ACCESS TO AND USE OF SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ERRORS ARE REPRODUCIBLE OR THAT ERRORS ARE REPAIRABLE AND DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES INCLUDING WITHOUT LIMITATION IN TERMS OF THEIR CORRECTNESS, USEFULNESS, ACCURACY, RELIABILITY, OR OTHERWISE. BLINK WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO PUBLIC NETWORKS, HOSTING PROVIDERS OR OTHER THIRD-PARTY INFRASTRUCTURE PROVIDERS.

## 9. Indemnification

You agree to defend, indemnify and hold harmless Blink, its officers, directors, employees, Affiliates and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, and expenses (including but not limited to attorney's fees) arising from the unauthorized use of the Services and/or breach of your warranties with respect to Content and Personal Data.

## 10. Intellectual Property Rights

1. **Blink IP.** All right, title and interest in and to the Services, including without limitation any underlying data, software, design, UI, information, texts, files, "look and feel", features, any new version releases, enhancements, modifications, improvements, derivative works thereof and Feedback, and all Intellectual Property Rights therein, are and shall remain solely owned by Blink or their respective licensors ("Blink IPR").
2. **Your Content.** Subject to Section 9.1, you retain all rights to any and all your content that you create, develop or upload to the Services, including any applications and software services, including add-ons, features, use cases, and extensions developed through the Services ("Apps") or any files, documents, images, text, recordings, chat logs, transcripts, and similar data (collectively, the "Content"). You will have sole responsibility for your Content. Blink does not provide back-up or archive services and all Content shall be deleted upon termination of this Agreement.



You warrant that (i) you have the right to upload or otherwise share your Content with Blink and that you obtained all necessary consents under any applicable laws, including any privacy related laws, to effectuate Blink's rights to use the your Content as contemplated herein, (ii) the Content does not infringe on any rights of any third party, including intellectual property and privacy rights; and (iii) your Content is free of viruses, trojans, time-bombs and any other malicious code. In order to enable the Services and extend those use cases and tools developed by you through the Services to the entirety of Blink's community of customers, you hereby agrees to grant Blink a worldwide, perpetual, irrevocable, royalty-free, sublicensable, unrestricted license to use, copy, host, store, display, reproduce, modify, adapt, edit, translate and create derivative works of the Apps as part of the Services and offer the capabilities of the Apps to other users of the Services. The distribution of the App as part of the Services shall exclude any disclosure of your Confidential Information.

3. **Feedback.** You may provide Blink with feedback regarding the Services, including without limitation suggestions, ideas, bug notes and user experience testimonies (collectively, "**Feedback**"). Feedback shall not include your Confidential Information. Blink may, in connection with any of its services or solution, freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise and you hereby assign all right, title and interest in and to all Feedback to Blink upon creation thereof.
4. **Usage Data.** Usage Data includes aggregate, analytical or statistical data which is derived, created or learned from the use of the Services ("**Usage Data**"). Notwithstanding anything to the contrary in this Agreement, Blink may collect and use Usage Data to develop, improve, support, and operate its products and services, and Blink may use such Usage Data for internal business purposes only to the extent such Usage Data has been aggregated and anonymized such that you, your Authorized Users or your end users cannot be identified.
5. **Third Party Components.** The Services include third party software components that are subject to open source licenses or pass through commercial licenses ("**Third Party Components**", and "**Third Party Terms**", respectively). Some of the Third Party Software Terms may be made available to you through the Services, its documentation or via a supplementary list provided by Blink. Any covenants, representations, warranties, indemnities and other commitments with respect to the Services in this Agreement are made by Blink and not by any authors or suppliers of, or contributors to such Third Party Components. Any use of Third Party Components is subject solely to the rights and obligations under the applicable Third Party Terms. If there is a conflict between any Third Party Terms and the terms of this Agreement, then the Third Party Terms shall prevail but solely in connection with the related Third Party Components. Notwithstanding anything in this Agreement to the contrary, Blink does not make any representation, warranty, guarantee, or condition, and does not undertake any liability or obligation, with respect to any Third Party Components.
6. **Privacy.** Blink's privacy practices are governed by the Blink Privacy Policy, the most updated copy of which can be found at [www.blinkops.com/privacy-policy](http://www.blinkops.com/privacy-policy) ("**Privacy Policy**"). Blink shall collect personal data in accordance with the Privacy Policy in order to provide the Services. Blink may also process personal data as part of your use of the Service as a processor of such data on your behalf as a controller and owner of such personal data. The analytics information shall not be deemed as confidential or proprietary information of yours.



## 11. Confidentiality

Each party may have access to certain non-public and/or proprietary information of the other party (the "**Discloser**"), in any form or media, including (without limitation) confidential trade secrets and other information related to the products, software, technology, data, know-how, or business of the other party, whether written or oral, and to any other information that a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive ("**Confidential Information**"). Notwithstanding anything to the contrary, Blink IPR is deemed as Blink Confidential Information. Neither party shall have an obligation under this Agreement to maintain in confidence any information that it can demonstrate that (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of receiving party; (ii) the receiving party can demonstrate in its records to have had rightfully in its possession prior to disclosure of the Confidential Information by the Discloser; (iii) receiving party rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of this Agreement; (iv) the receiving party can demonstrate in its records to have independently developed, without breach of this Agreement and/or any use of the Discloser's Confidential Information; or (v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall make best effort to provide prompt notice of such court order or requirement to the Discloser to enable the Discloser to seek a protective order or otherwise prevent or restrict such disclosure. Each party shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect the Discloser's Confidential Information from disclosure to a third party. Neither party shall use or disclose the Confidential Information of the Discloser except as expressly permitted under this Agreement. All right, title and interest in and to Discloser's Confidential Information are and shall remain the sole and exclusive property of the Discloser.

## 12. Term and Termination

1. **Term.** The term of this Agreement shall commence on the Effective Date and will continue for a period of one (1) year (the "**Subscription Term**"), and thereafter renewed for additional rolling one (1) year periods (each, a "**Renewal Term**" and together with the Subscription Term, the "**Term**"). Either party may provide a notice of non-renewal of the Term no less than thirty (30) days prior to the then in-effect Subscription or Renewal Term.
2. **Termination.** A party may terminate this Agreement: (i) upon the other party's material breach that is not cured within thirty (30) days after receiving written notice of such breach, except for breach of Sections 2.3, 9 and 10 which shall be deemed incurable; or (ii) upon providing written notice in the event that one or more of the following events occur(s): (a) appointment of a trustee or receiver for all or any part of the assets of the other party; (b) insolvency or bankruptcy of the other party; (c) a general assignment by the other party for the benefit of creditor(s); or (d) dissolution or liquidation of the other party. In addition, Blink reserves the right at any time, in its sole discretion, to change, limit or suspend your access to your Account without prior notice, as may be necessary due to any breach of this Agreement, a change to Blink's business (i.e. eliminating the Services), any perceived risk to the Services or other users of the Services, or other lawful reason.
3. **Effect of Termination.** Upon termination of this Agreement, (i) all licenses granted under this Agreement shall expire, and Blink will cease providing the Services; (ii) each party shall return any copies of Confidential Information to the Discloser, provided however, that any of your Content shall be immediately deleted by Blink upon termination of this Agreement; and (iii) any outstanding Fees shall become immediately due and payable on the date of termination of the Agreement. If the Agreement is terminated by you for the material breach of Blink then you will be entitled to a



refund of the unused pre-paid annual subscription amount calculated from the date of notice of termination for material breach issued by you. Those provisions of this Agreement which by their nature should survive the expiration or termination of this Agreement shall so survive its expiration or termination, including without limitation, Sections 5.2, 7, 8, 9, 10, 11.3 and 12-13.

## 13. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BLINK OR ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE, MALFUNCTION, FIRE, ELECTRICAL FAILURE OR SHORT CIRCUIT), OR LOSS OF PROFITS OR DATA OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF BLINK OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT FOR FRAUD, WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF BLINK AND/OR ITS LICENSORS, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID TO BLINK HEREUNDER DURING THE 12 MONTHS PRECEDING THE CLAIM THAT GAVE RISE TO DAMAGES.

## 14. Miscellaneous

1. **Modifications.** We reserve the right, at our discretion, to change this Agreement at any time. Such change will be effective ten (10) days following our sending a notice thereof to you or posting the revised Agreement on the Blink website, and your continued use of the Service thereafter means that you accept those changes.
2. **Publicity.** Blink may use your name and logo as a user of the Services on its website, press releases, and other marketing materials and presentations.
3. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of California, U.S., without regard to that state's conflicts of laws rules. All disputes arising under or relating to this Agreement shall be resolved exclusively in the appropriate court sitting in Santa Clara county, California.
4. **Assignment.** Neither party may assign or otherwise transfer its rights or obligations under this Agreement without the prior consent of the other party, provided that either party may assign or otherwise transfer its rights or obligations herein to an Affiliate or in the event of transfer to a person or entity who directly or indirectly acquires all or substantially all of the assets or business of such party, whether by change of control, sale, merger or otherwise, without consent. Any prohibited assignment, transfer or sublicense shall be null and void.
5. **Entire Agreement.** This Agreement and any exhibits hereto set forth the entire agreement and understanding between the parties. For the sake of clarity, these terms and conditions shall not apply to licensees who have licensed the Services through, and signed an end user license agreement with, a reseller or partner authorized by Blink to resell subscriptions to the Software, so long as such end user license agreement complies substantially with the terms and conditions of this Agreement. In such cases, you are granted a license in the Services by and through the reseller and not directly by Blink.
6. **No Waiver.** The failure of any party at any time to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later time to enforce the same. No waiver by any party of any condition or of any breach of any term contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of any breach of any such term or any other term set forth in this Agreement.



7. **Severability.** If any provision of this Agreement is unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions contained in this Agreement invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any portion of this Agreement shall not affect the remaining portions of this Agreement.

8. **Force Majeure.** Blink will not be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including without limitation, natural disasters, acts of civil or military authority, fire, flood, war, labor shortage or dispute, public health emergencies, pandemic or governmental authority.

## 15. Definitions

1. "**Affiliate**" shall mean any entity that Controls, is Controlled by, or is under common Control with you, provided that such an affiliate is not a competitor of Blink. "**Control**" shall mean the ownership, directly or indirectly, of 50% or more of the voting interest.
2. "**Authorized Users**" means your employees whose duties require such access or authorized consultants and subcontractors (excluding any competitors of Blink) only where such use is required as part of their performance of the services for you.
3. "**Intellectual Property Rights**" shall mean any (i) patents and patent applications throughout the world, including all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and re-examinations of any of the foregoing, all whether or not registered or capable of being registered; (ii) common law and statutory trade secrets and all other confidential or proprietary or useful information that has independent value, and all know-how, in each case whether or not reduced to a writing or other tangible form; (iii) all copyrights, whether arising under statutory or common law, whether registered or not; (iv) all trademarks, trade names, corporate names, company names, trade styles, service marks, certification marks, collective marks, logos, and other source of business identifiers, whether registered or not; (v) moral rights in those jurisdictions where such rights are recognized; (vi) any rights in source code, object code, mask works, databases, algorithms, formulae and processes; and/or (vii) all other intellectual property and proprietary rights, and all rights corresponding to the foregoing throughout the world.
4. "**Services**" means the Blink proprietary SaaS platform which extends a toolset and interface of applications and cloud environments, and which enables you and your Authorized Users to build internal tools for your cloud operations. The Services include the documentation and any updates, upgrades, versions, enhancements, improvements and modifications there to.
5. "**Purchase Order**" means the ordering document the Parties have signed and entered into in respect of the Services.