

# TM2/TM3 Hosted Terms and Conditions

All Users of services provided by BLUE ZINC IT LTD, by use of such services, accept the terms of business set out in the form of service agreement which follows, irrespective of the mode or manner of ordering employed by the User when ordering the services.

This Agreement is made between Blue Zinc IT Ltd. Registered office: Dill House, Unit 4C, Castlereagh Business Park, 478 Castlereagh Rd, Belfast, County Antrim, BT5 6BQ ("we" and also "BLUE ZINC IT LTD") and the user ("you").

The following constitute the terms and conditions under which BLUE ZINC IT LTD trades and supplies its TM2/TM3 Hosted services and related products. These conditions, in conjunction with the details as shown on the BLUE ZINC IT LTD Order Form (where completed) represent the totality of the agreement and form the Contract between BLUE ZINC IT LTD and the User for TM2/TM3 Hosted, but are in addition to the TM2/TM3 Licensing and Technical Support Agreement for the use of TM2/TM3 Practice Management Software and any additional Agreements for related software or services.

Any agreed variation or alteration to part of these terms and conditions as annexed to this Contract will not invalidate the remainder or the whole. Any alteration or addition to the supplies instructed on the order will require to be the subject of a new order. BLUE ZINC IT LTD is entitled to suspend services if the User does not adhere to any or several conditions of this Contract.

## 1. Definitions

In this Contract unless the context otherwise requires:

"Service" or "Services" means TM2/TM3 Hosted and any other web or remote hosted related service or facility provided by us to you;

"TM2/TM3 Hosted" means the rental of database and data storage space on a BLUE ZINC IT LTD Server for the sole use of running TM2/TM3 Practice Management software;

"Server" means the computer server equipment operated by us or provided by you in connection with the provision of the Services; Where operated by us, the Server will contain more than 1 Client Area;

"Client Area" means the secure area on the Server allocated by us to you for use by you as your TM2/TM3 Practice Management Server;

"BLUE ZINC IT LTD" means Blue Zinc IT Ltd, Registered office: Erwin House, 18-22 Church Rd, Holywood BT18 9BU;

"Contract" means the agreement between BLUE ZINC IT LTD and the User incorporating these conditions, the BLUE ZINC IT LTD Order Form (where completed) and BLUE ZINC IT LTD's published charges for the provision of its services; References to "Agreement" shall, where the context admits, be read as referring to the Contract

"Charges" means the charges as agreed on the Order Form (where completed) and BLUE ZINC IT LTD's latest published prices for products and services requested or incurred by you

"bandwidth" means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract;

"data transfer" means all traffic that passes through the Client Area including specifically but not exclusively Transferred Database information, all file transfers;

"Site" means the premises or location at which Service is or is to be provided under this Contract;

"Service Working Hours" means the hours which BLUE ZINC IT LTD monitor and support the Service and are defined as 8:30am to 5:30pm, Monday to Friday, excluding published Northern Ireland Public and Bank holidays;

"Equipment" means equipment which is supplied by or on behalf of BLUE ZINC IT LTD to the customer or placed at or on a Site for the purpose of providing Service;

"Internet" means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Intermit Protocol) Internet Standards means the protocols and standards defined in the following Internet documents: RFC 1009, 1122, 1123 and 1250 and any future such protocols and standards as appropriate;

"User" means you, the Customer, or any person who makes use of the services through you or on your behalf;

"Initial Contract Term" means the initial period of service as specified in clause 5;

"Extension Term" means each successive period of twelve months after the Initial Contract Term.

## 2. TM2/TM3 Hosted Data & Usage

2.1. The data stored by you on the hosted server remains your property and in no way do Blue Zinc IT Ltd assume ownership of the data. Blue Zinc IT Ltd provides a secure storage service for your data.

2.2. We shall have no liability for any loss of or damage to any data stored on the Server.

2.3. You shall effect and maintain adequate insurance cover in respect of any loss of or damage to data stored on the Server.

2.4 You represent, undertake and warrant to us that you will use the Client Area allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that

2.4.1 You will not use the Client Area in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so;

2.4.2 You will not store or transmit:

(a) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;

(b) any material known or suspected to contain a virus or other hostile computer program;

(c) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

Your attention is drawn to the provisions of subclause 8.2 below.

2.5. You shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.

2.6. You shall observe the procedures which we may from time to time prescribe and shall make no use of the Client Area which is detrimental to our other customers.

2.7. In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company, you warrant that the Services will not be used by anyone under the age of 18 years.

2.8 Any access to other networks connected to BLUE ZINC IT LTD must comply with the rules appropriate for those other networks.

2.9 While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hackers.

3.0 Customers are restricted to the data storage and bandwidth quota according to your agreed package. Additional bandwidth usage and data storage will be charged at current published prices.

### 3. Blue Zinc IT Ltd TM2/TM3 Hosted Service

3.1 Connection to the BLUE ZINC IT LTD Service is via a fixed telecommunications link or dial up connection. This Contract does not include the provision of telecommunications services necessary for connection to the BLUE ZINC IT LTD Service.

3.2 Requests relating to the provision of Service are, unless otherwise agreed to be made or confirmed in writing or by electronic mail.

3.3 BLUE ZINC IT LTD will use all reasonable endeavours to adhere to any dates proposed by either BLUE ZINC IT LTD or you for the provision of Service; however any such date is to be treated as an estimate only and BLUE ZINC IT LTD accepts no liability for failure to meet such dates.

3.4 BLUE ZINC IT LTD will use all reasonable endeavours to provide reliable Service; however, it is not practicable to provide Service free of faults and BLUE ZINC IT LTD does not undertake to do so. In the event of a fault in Service, you must report the fault by telephone telefax or electronic mail to BLUE ZINC IT LTD's Technical Support at the appropriate numbers or addresses or other such numbers or addresses that BLUE ZINC IT LTD may from time to time provide. Upon receipt of the fault report, BLUE ZINC IT LTD will take all proper steps without undue delay to correct the fault. BLUE ZINC IT LTD shall not, in any event, be liable for interruptions of Service or downtime of a Server.

3.5 BLUE ZINC IT LTD may:

3.5.1 temporarily suspend for the purpose of repair, maintenance or improvement, part or all of Service, without notice. BLUE ZINC IT LTD undertakes to use reasonable endeavours to restore Service as soon as practicable after any such suspension,

3.5.2 give or update instructions regarding the use of Service which in BLUE ZINC IT LTD's reasonable opinion are necessary in the interests of safety, or to maintain or improve the quality of Service to BLUE ZINC IT LTD's customers. Any such instructions shall, whilst they are in force, be deemed to form part of this Contract,

3.5.3 vary the technical specification of Service for operational reasons.

3.6 BLUE ZINC IT LTD Service Level Agreement:

3.6.1 Service Availability - BLUE ZINC IT LTD endeavour to have your Client Areas available during Service Working Hours. In the event of a Service Unavailability, BLUE ZINC IT LTD endeavour to have the Service returned within 4 working hours. Service Unavailability does not include Scheduled Maintenance or any unavailability resulting from (a) the Customer's applications, equipment, or facilities, (b) acts or omissions of the Customer, or any use or user of the Service authorized by

the Customer or (c) reasons of Force Majeure or other circumstances beyond BLUE ZINC IT LTD's reasonable control (as defined in clause 13 of these terms).

3.6.2 Compensation - For each complete working hour of Service Unavailability, in excess of the 4 working hours permitted unavailability, at the Customer's request the Customer's account shall be credited for the pro-rata charges for one day of the BLUE ZINC IT LTD Monthly Fee for the Service with respect to which this SLA has not been met up to a maximum of the complete monthly fee in any one month.

3.6.3 Scheduled Maintenance - "Scheduled Maintenance" shall mean any maintenance at any BLUE ZINC IT LTD Server of which the Customer is notified 48 hours in advance.

3.6.4 The Customer is solely responsible for providing BLUE ZINC IT LTD with accurate and current contact information for the Customer's designated points of contact. BLUE ZINC IT LTD will be relieved of its obligations in this agreement if BLUE ZINC IT LTD's contact information for the Customer is out of date or inaccurate due to the Customer's action or omission or if BLUE ZINC IT LTD's failure is due to reasons of Force Majeure or other circumstances beyond BLUE ZINC IT LTD's reasonable control (as defined in clause 13 of these terms).

## 4. Data Backup and Server Monitoring

4.1 Data Backup - BLUE ZINC IT LTD will perform a backup of your data on a daily basis to a secure area on the Server and copied to a secure off site location. Only the latest copy of the data is held. At the Customer's request, BLUE ZINC IT LTD will provide the Customer with a copy of this Backup data on optical media (CD or DVD) at an administration cost of £50/€75.

4.2 Server Monitoring – BLUE ZINC IT LTD will monitor the performance and use of the Server on a weekly basis to ensure optimum service.

## 5. Commencement and Initial Period of Service

The Service shall be for an initial period as specified on the Order Form (where completed). The Service, unless otherwise agreed on the Order Form (where completed), shall be provided for an Initial Contract Term of twelve months. The Initial Contract Term shall commence upon connection. Connection shall be deemed to be effected when the link is first live from your Site or other such point as requested by you, to the BLUE ZINC IT LTD network.

## 6. Bandwidth Utilisation

If the bandwidth or speed of Service used by you exceeds agreed quotas in a one month minimum period an excess charge will be payable by you at current published prices.

## 7. Disk Space Utilisation

If the Disk Space used by you exceeds agreed quotas an excess charge will be payable by you at current published prices.

## 8. Content and Misuse

8.1 You will use all reasonable endeavours to ensure that the BLUE ZINC IT LTD Service conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring BLUE ZINC IT LTD into disrepute.

8.2 You must not, nor must any other person, use the Service: to send or receive any material which is offensive, abusive, indecent, obscene, pornographic or menacing, or in breach of confidence, copyright, privacy or any other rights, to cause

annoyance, inconvenience or needless anxiety, or in breach of any provisions as contained within clauses 3 and 4 of this Contract, or other than in conformance with the acceptable use policies of any connected networks and the Internet standards.

## 9. Charges and Payment

The Client agrees to pay the charges on the following terms:-

9.1 All Charges shall become due and payable to BLUE ZINC IT LTD at the times and the stages specified in the Payment Schedule section of the Specification Sheet

9.2 The Client shall pay any additional charges which are agreed between BLUE ZINC IT LTD and the Client for the provision of the Services within 7 days after completion of the Services and the Client shall also pay such additional charges which are in BLUE ZINC IT LTD's sole discretion required as a result of the Client's instructions or lack of instructions, delay in providing or the inaccuracy of any Supplied Material or any other cause attributable to the Client

9.3 In the event of late payment the Client shall pay interest on the amount of the Charges outstanding at the rate of 2% above the base lending rate from time to time of the Bank of England

9.4 If any payment remains overdue BLUE ZINC IT LTD reserves the right to immediately close the Client's Client Area and to suspend all other work until payment of all outstanding charges and interest is made. Such closure or withholding does not relieve the Client of his or her obligation to pay any outstanding Charges and interest. If such a suspension is imposed, you will be liable for a "reconnection" charge of £50/€75.

9.5 The Client shall be liable for and shall indemnify BLUE ZINC IT LTD against all costs and expenses incurred by BLUE ZINC IT LTD in respect of any steps, actions or proceedings made or brought against the Client by BLUE ZINC IT LTD to obtain payment of outstanding Charges and interest

9.6 All payments must be in UK Pounds Sterling unless otherwise agreed in writing. If any cheque from the Client is returned by the bank as unpaid for any reason the Client will be liable for an administration fee of £30/€45

9.7 You acknowledge that our Services are provided using facilities provided to us by third parties; BLUE ZINC IT LTD shall have the right, subject to 14 days prior written notice to you, to increase our Charges at any time during the Initial Contract Term or any Extension Term, whether to reflect increase costs to us from such third parties or otherwise. However, if such increase exceeds 10% of the Charge in question prior to such notice you shall be entitled to terminate the Contract by written notice to us given by you within 7 days after service of our notice of increase to you. If you do so terminate, you will remain liable for all Charges (at the previous rate) up to the date the Contract ends.

## 10. Default

10.1 If you do not pay the charges in accordance with the provisions of clause 9 of this Contract, or breach the terms of this Contract in any other way, or are subject to bankruptcy or insolvency proceedings BLUE ZINC IT LTD can (without prejudicing, losing or reducing any other right or remedy) suspend Service, wholly or partially, without notice (but the User remains liable during the suspension to pay charges for Service), or terminate this Contract by immediate notice, without prejudice to BLUE ZINC IT LTD's pre-existing rights.

10.2 Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure: or if the User is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.

10.3 You continue to be liable to pay all charges which are due for Service during any period in which you do not comply with this Contract.

10.4 On termination of this Agreement or suspension of the Services we shall be entitled immediately to close your Client Area and to remove all data located on it. We shall be entitled to delete all such data but we may at our discretion hold such data for such period as we may decide, to allow you to collect it at your expense, subject to payment in full of any amounts withstanding and payable to us. On termination, it is your responsibility to request your data be held on the Server up to the maximum period of 1 month after termination.

10.5 For so long as any sum due to BLUE ZINC IT LTD hereunder is unpaid or any other amount is due to or properly claimed by BLUE ZINC IT LTD from you for services or goods supplied or for any other reason, whether pursuant to these terms or otherwise, BLUE ZINC IT LTD shall be entitled to retain any property owned by you or lawfully in your custody or possession and which is held by BLUE ZINC IT LTD or by its agents until such time as all amounts due to BLUE ZINC IT LTD are paid and/or any issue between you and BLUE ZINC IT LTD is determined.

10.6 If BLUE ZINC IT LTD waives a breach of Contract by you, that waiver is limited to the particular breach. Any delay by BLUE ZINC IT LTD in acting upon a breach is not to be regarded in itself as a waiver.

## 11. Termination of Service

11.1 Service may be terminated by either party on giving at least 30 days notice to the other expiring on the last day of the Initial Contract Term or at any time thereafter. If BLUE ZINC IT LTD gives notice you shall pay all charges up to the expiry of the notice.

11.2 Subject to clause 9.7, if you terminate this contract at any period prior to the Initial Contract Term, you shall pay all charges due up to the end of the Initial Contract Term.

11.3 BLUE ZINC IT LTD reserves the right during the Initial Contract Term and at any time thereafter to terminate this Contract by giving to you not less than 30 days prior written notice of termination.

11.4 After the expiry of the Initial Contract Term you may terminate the Service by giving not less than 30 days prior written notice of termination, but subject to subclause 11.5.

11.5. Your notice does not avoid any other liability for Service already provided.

## 12. Notices

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or the Order Form or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

## 13. Matters beyond Blue Zinc IT Ltd's reasonable control

BLUE ZINC IT LTD is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeure, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, and failure by other service providers, including Telecommunication providers and Internet Service Providers.

## 14. Liability

14.1 You acknowledge that BLUE ZINC IT LTD has no control over the information transmitted via the Service and that BLUE ZINC IT LTD does not examine the use to which you put the Service or the nature of the information you are sending or receiving. BLUE ZINC IT LTD hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.

14.2 BLUE ZINC IT LTD undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus.

14.3 BLUE ZINC IT LTD is not in any way liable in contract or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

14.4 BLUE ZINC IT LTD makes no warranty as regards to its Services or equipment and will not be responsible for any damage allegedly suffered or claimed by you for any reason including but not limited to loss of data and Service interruptions.

14.5 All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to subclause 14.6.

14.6 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

14.7 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.

14.8 In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

## 15. Indemnity

You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of Services by us to you and your use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement.

## 16. Assignment

You may assign all or part of this Contract to any other party only with the prior written agreement of BLUE ZINC IT LTD. BLUE ZINC IT LTD reserves the right to assign all or part of this Contract at any time to any subsidiary or associate company of BLUE ZINC IT LTD.

## 17. Law

This Agreement shall be governed by and construed in accordance with the law of Northern Ireland and you hereby submit to the non-exclusive jurisdiction of the Northern Irish courts.

## 18. Headings

Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

## 19. Entire Agreement

These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral: between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been made expressly in this Agreement.