

# BLUEGIGA GENERAL TERMS AND CONDITIONS FOR SERVICES

## 1.1.2005

### 1. PARTIES

- 1.1 These terms and conditions shall be applied to the Offer made by Bluegiga Technologies Oy to the Customer. Those hereinafter separately referred as a Party and together as Parties.

### 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the meaning defined below:

- 2.1 **"Affiliate"** shall mean, with respect to any Party hereto, any corporation or other entity which, directly or indirectly, controls, is controlled by or is under common control with such Party. The term "control" used above shall mean a direct or indirect possession of a power enabling a corporation or other entity to direct or cause the direction of the management or policies of another corporation or other entity, whether by reason of ownership of voting stock or other equity interests, by contract or otherwise.
- 2.2 **"Effective Date"** shall mean the date on which the Customer has accepted the Offer or Contract.
- 2.3 **"Intellectual Property Rights"** shall mean any and all proprietary, common law and/or statutory intellectual property rights, including but not limited to patent rights, copyrights and trademark rights.
- 2.4 **"Pre-existing materials"** shall mean all material, tangible or intangible, and documentation prepared and developed independently by a Party prior to the Effective Date.
- 2.5 **"Assignment Deliverables"** shall mean any and all deliverables, tangible or intangible, being the result of the Services (as defined below) and any other development work performed by Bluegiga under this Agreement.
- 2.6 **"Offer"** shall contain a description of the Services and an estimated time schedule according which they are being performed. The Offer may be modified by the Parties from time to time. The modifications to the Offer shall be valid and applicable only if they have been made in writing and signed by the duly authorized representatives of the Parties.
- 2.7 **"Resource(s)"** shall mean the officers and employees of Bluegiga or the Customer named in the Offer or Contract being involved in the performing of the Services.
- 2.8 **"Services"** shall mean any kind of work performed by Bluegiga for the Customer expressly defined in the Bluegiga's Service Pricelist, Offer or Contract. The Services may include but is not necessary limited to support, general consulting, training, feasibility studies, workshops, technical design work, software development, hardware design, outsourced third party services and project management.
- 2.9 **"Shared materials"** shall mean any and all material, tangible or intangible, and documentation prepared and developed by a Party during the Services.
- 2.10 **"Contract"** Shall mean a separate agreement between parties for a separately defined Service.

### 3. RIGHTS AND OBLIGATIONS OF BLUEGIGA

- 3.1 Bluegiga shall perform the Services with due care using required professional skills.
- 3.2 Bluegiga is neither entitled nor obligated to perform any other services than the Services (hereinafter "Other Services"). As an exception to the aforesaid, Bluegiga is entitled to perform Other Services if i) they are considered necessary by Bluegiga to complete the agreed Services or ii) the Customer requests Bluegiga to do so. If Bluegiga performs Other Services, the terms and conditions of this Agreement shall be automatically applied to such performance as if the Other Services were the Services.

- 3.3 Bluegiga has a right to use subcontractors to perform the Services.
- 3.4 This Agreement is non-exclusive and nothing shall prevent Bluegiga from offering and providing any services to any other corporation or entity than the Customer.
- 3.5 Bluegiga's Resources shall have a right to use Customer's information systems to the extent that it is required to perform the Services. Such information systems shall be specified in the Offer or Contract.
- 3.6 Bluegiga's Resources shall have a right to keep their annual and other vacations and to participate in Bluegiga's meetings to a reasonable extent. Bluegiga shall deliver detailed information to the Customer of such absences due to Bluegiga's meetings upon Customer's request.
- 3.7 Bluegiga shall be obligated to return Pre-existing Material of the Customer upon Customer's request. Notwithstanding the foregoing if the agreed Services contain modifications to the said material, Bluegiga shall have a right to use the modified part of the Pre-existing Material.

### 4. RIGHTS AND OBLIGATIONS OF THE CUSTOMER

- 4.1 The Customer has a right to supervise and give instructions to Bluegiga and its Resources when they are performing the Services.
- 4.2 The Customer shall perform in conformity with this Agreement and carry out the tasks and measures for which it can be considered to be responsible. The Customer shall use best efforts to contribute to the performance of the Services and provide Bluegiga with any correct information and documentation needed to perform the Services as agreed by the Parties. Such information and documentation shall be provided to Bluegiga on a date specified in the Offer or Contract before Bluegiga begins to perform the Services and thereafter during the validity of this Agreement. If such information and documentation is not ready at such date, the time needed for preparing the documentation shall be added automatically to the estimated time schedule. The Customer shall be solely responsible for the correctness of any information and documentation it provides to Bluegiga. The Customer shall be responsible for acquiring the required Resources enabling it to provide Bluegiga with the support defined above.
- 4.3 The Customer ensures that all of its Resources and other persons working for the Customer shall use their best efforts to assist Bluegiga when it is performing the Services.
- 4.4 If the Services are performed at Customer's premises, the Customer shall offer to persons performing the Services without any additional costs normal standard working equipment, tools and work space. In addition the Customer shall provide them with all workers' services required by the applicable law in force. The Customer also asserts that the premises, at which the Services are being performed, fulfill all work protection requirements of the applicable law in force.
- 4.5 Unless otherwise agreed in writing, neither party may engage a person who is or has been in the service of the other party and performs or has performed any tasks relating to the Services, or enter into any other agreement or other arrangement, whose purpose is to obtain the work contribution of such person, until six (6) months have passed from the date on which the Services have been concluded or from the termination of the employment in question, whichever of the two occurs first. A breach of this provision by the Customer shall entitle Bluegiga to assert liquidated damages against the Customer equal to one hundred (100) percent of solicited persons annual salary, however, not less than twenty thousand (20,000) Euro.

**5. PROVIDING THE SERVICES**

- 5.1 An estimated time schedule of the Services performed by Bluegiga is defined in the Offer or Contract. Bluegiga has a right to extend the time schedule at its sole discretion to a reasonable extent, if this is due to any event classified as force majeure, any reason independent from Bluegiga or from any reason caused by the Customer, directly or indirectly.
- 5.2 The Customer undertakes for its own part to make without any delay the decisions necessary for the performance of the Services. If for any reason, the Services defined in the Offer or Contract change, are delayed, or will be aborted by the Customer or as a result of indirect reason caused by the Customer, Bluegiga shall be entitled to reimbursement for the costs and damages occurred.
- 5.3 Assignment Deliverables shall be considered to be accepted, unless the Customer within ten (10) business days after receiving the Assignment Deliverables from Bluegiga, makes a written complaint detailing the reasons for refusal and provides to it, such information and materials as Bluegiga may reasonably request to document and reproduce such error and to verify whether any proposed solution corrects the error.
- 5.4 Following the receipt of such information and materials, if i) Bluegiga determines that Assignment Deliverables do not conform to the requirements which can reasonably be expected from them and ii) it can be indisputably shown that Bluegiga has not performed the Services as agreed in the subsection 4.1 above, then Bluegiga will at its election (a) modify such Assignment Deliverables at its own expense so that they conform to such requirements or (b) refund some of the fees paid by the Customer to Bluegiga corresponding to the significance of the non-conformity.

**6. PRICES AND PAYMENT TERMS**

- 6.1 The Customer agrees to pay to Bluegiga the fees defined in the Offer made by Bluegiga or the fees defined in the contract agreed by the parties. The payments shall be made against monthly invoices from Bluegiga. The current applicable VAT shall be added to the agreed fees. Unless otherwise agreed by the Parties, Bluegiga shall invoice the Customer based on the time actually consumed for the performance of the Services and other actual expenses occurred when performing the Services. For avoidance of doubts the Parties jointly state that the above-mentioned time schedule is based on Bluegiga's estimation and that the Services shall always be invoiced based on actual work performed by Bluegiga's Resources.
- 6.2 Invoice shall be paid within fourteen (14) days of the invoice date. Interest on overdue payments shall be determined by the current applicable Interest Act (1982/633).

**7. INTELLECTUAL PROPERTY RIGHTS, RIGHTS AND RESTRICTIONS**

- 7.1 All title and right including without limitation the copyright and other Intellectual Property Rights to the Assignment Deliverables shall remain by and belong to the Bluegiga. The Customer acknowledges that the Assignment Deliverables are the result of Bluegiga's and its licensors' creative work and therefore the Customer commits not to use any part of the Assignment Deliverables in ways other than agreed without written approval from Bluegiga during or after the termination of this Agreement.
- 7.2 Bluegiga hereby grants to the Customer a perpetual, non-transferable and non-exclusive right to use the Assignment Deliverables solely for Customer's internal

business purposes. The right and granted above shall not cover Customer's Affiliates.

- 7.3 The Customer shall have no right to copy, modify, adapt, reverse engineer, decompile, disassemble, subright, distribute, rent, lease, sell, create derivative works or otherwise exploit the Assignment Deliverables to any wider extent than is necessary for the purpose of this Agreement unless expressly permitted by Bluegiga or applicable mandatory law.
- 7.4 The Customer acknowledges that all rights not expressly granted by this Agreement shall be reserved and that no implied rights regarding the Assignment Deliverables shall be granted nor received.
- 7.5 The Customer acknowledges that the Assignment Deliverables may contain valuable proprietary information and trade secrets of Bluegiga and that it shall take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of the Assignment Deliverables. Without limiting the foregoing, the Customer agrees: (a) to take with respect to the Assignment Deliverables at least those measures that it takes to protect its own Confidential Information; and (b) that the Assignment Deliverables may not be disclosed, reproduced, summarized, distributed or used except as necessary to exercise the rights granted hereunder. For avoidance of doubts the Parties jointly state that the Assignment Deliverables shall be considered as Confidential Information defined more particularly below in section 10. (CONFIDENTIALITY) of this Agreement, unless it is clearly written out in the Offer or Contract which Assignment Deliverables shall not be included in the Confidential Information.

**8. TERM AND TERMINATION**

- 8.1 The right granted under this Agreement to use the Assignment Deliverables for internal business purposes shall be perpetual unless otherwise specified in the Offer or Contract or terminated for cause under subsection 8.2 below.
- 8.2 Termination for Cause.
- 8.2.1 This Agreement, and the right granted in this Agreement, may be terminated by Bluegiga after fourteen (14) days' written notice upon the occurrence of one or more of the following:
- (a) Upon Customer's attempt to reverse engineer the Assignment Deliverables or to use them in any other way that is inconsistent with the section 7. (INTELLECTUAL PROPERTY RIGHTS, RIGHTS AND RESTRICTIONS) of this Agreement;
  - (b) Upon failure of the Customer to pay any amount due to Bluegiga hereunder at the time such amount is due. An alternative solution for such non-payments is that Bluegiga can temporarily discontinue to perform the Services until such payments have been made by the Customer; or
  - (c) Upon any other breach by the Customer of its material obligations under this Agreement.
- 8.2.2 Bluegiga shall have a right to terminate this Agreement with immediate effect if the Customer is insolvent, will go into liquidation, will have a stay of bankruptcy, will have proceedings to allow time for composition, is in compounding, or is bankrupt.
- 8.3 Should this Agreement be terminated according to the subsection 8.2 above, i) the Customer agrees to return or certify to the destruction of all copies of the Assignment Deliverables and/or any result of the Services performed by Bluegiga, and all amounts owed by the Customer under this Agreement shall be immediately due and payable. To remove all doubt, all rights granted to the Customer hereunder shall immediately terminate upon any termination of this Agreement, except as expressly set forth in subsection 8.4 below. In addition ii) the Customer agrees to pay

Bluegiga compensation as agreed in the Offer, Contract or Pricelist attached thereto for the Services performed before a notice of termination has been issued by Bluegiga.

- 8.4 The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement including but not limited to the confidentiality provisions, shall survive termination, cancellation, or expiration of this Agreement.

## **9. REPRESENTATIONS AND WARRANTIES**

- 9.1 Each Party represents and warrants to the other Party that: (i) such Party has the full corporate right, power and authority to enter into this Agreement, to grant the rights granted hereunder and to perform the acts required of it hereunder; (ii) the execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder, do not and will not violate any Agreement to which such Party is a party or by which it is otherwise bound; (iii) when executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms and (iv) such Party acknowledges that the other Party makes no representations, warranties or Agreements related to the subject matter hereof that are not expressly provided for in this Agreement.
- 9.2 Except as expressly set forth in this Agreement, neither Party makes, and each Party hereby specifically disclaims, any representations or warranties, express or implied, including but not limited to any implied warranty of Assignment Deliverables' merchantability and fitness for a particular purpose.
- 9.3 The Customer shall guarantee that the information and operating systems and the software that Bluegiga's Resources will use or modify when performing the Services are the property of the Customer and legally licensed from their intellectual property right holders. The Customer shall hold Bluegiga, its directors, employees and Affiliates harmless of any claims issued by any third party that may be presented to Bluegiga and that arise from alleged breach of third party property or license rights.
- 9.4 In addition the Customer represents and warrants that it holds any third party harmless in accordance with the Product Liability Act (1990/694) when using the Assignment Deliverables.

## **10. CONFIDENTIALITY**

- 10.1 If nothing else has been agreed between the Parties on non-disclosure of Confidential Information the following provisions shall be applied:
- 10.2 During the validity of this Agreement the Parties may disclose to each other confidential or otherwise sensitive information or material. Therefore the parties agree as follows:
- 10.3 For the purpose of this clause Confidential Information shall mean all and any information that the Parties disclose to the other Party and that is either indicated to be confidential by the disclosing Party or by its nature is such that the receiving Party knew or had a reason to know it to be confidential.
- 10.4 The Parties shall hold in confidence all Confidential Information acquired from the other Party and shall not to any extent disclose it to any third parties without a written permission from the other Party. The obligation of non-disclosure shall cover the disclosure of information in any form including but not limited to oral, written and electronic forms. The obligation of non-disclosure shall also apply to the disclosure of Confidential Information to the parent companies and Affiliates of the Parties.

- 10.5 The Parties may use the disclosed Confidential Information only for the purposes stated in this Agreement. The Parties shall not make any other use of disclosed Confidential Information without the written approval of the other Party.

- 10.6 Both Parties shall upon the termination of the Agreement and at the request of the other Party without any unnecessary delay destroy or return to the other Party all material that contains disclosed Confidential Information.

## **11. GENERAL TERMS**

### **11.1 LIMITATIONS OF LIABILITY**

The Parties shall not be liable for any indirect or consequential damages. The maximum amount of damages Bluegiga shall be liable for shall be fifteen (15) percent of the total amount, which has been paid by the Customer to Bluegiga under this Agreement for the performing of the Services. Bluegiga shall not have any liability whatsoever for any harm or loss arising from the use of the Assignment Deliverables. These limitations of liability shall not apply to damages that have been caused by gross negligence, willful conduct or by breaching the confidentiality provisions in section 10. (CONFIDENTIALITY) of this Agreement.

However Bluegiga's entire liability will cease at latest three (3) months after the Assignment Deliverables have been accepted or they are considered to be accepted by the Customer (hereinafter "Indemnity Period"). Therefore all claims concerning the Services performed by Bluegiga must be presented during the said three (3)-month Indemnity Period. Otherwise the Customer shall lose all rights for any damages.

For avoidance of doubts the Parties hereby jointly state that i) they are fully aware of all technological risks and other uncertainties typical to technology services as the ones performed under this Agreement (hereinafter "Risks") and that ii) they accept the Risks to be part of Parties' contractual relationship. Bluegiga shall not have any liability whatsoever if the Risks come true.

### **11.2 FORCE MAJEURE**

Neither Party shall be liable to the other Party for any delay or non-performance of its obligations in the event and to the extent that such delay or non-performance is due to an event that is beyond the control of the Parties and that the Parties had no way of anticipating and the consequences of which the Parties cannot reasonably avoid or prevent. This shall also apply to the obligations of permitted subcontractors if their performance is affected by such events. Neither Party will be liable for failure to perform its obligations under this Agreement due to circumstances which can be qualified as Force Majeure.

A Party affected by Force Majeure shall without delay make a written notification of the delay in meeting its obligations to the other Party. A Party shall also make an undelayed notification to the other Party of the termination of any Force Majeure.

Both Parties shall make all reasonable efforts to reduce to a minimum and mitigate the effect of any delay occasioned by an event of Force Majeure.

### **11.3 ASSIGNMENT OF RIGHTS**

Outside of the rights and obligations explicitly assigned to third parties by the provisions of this Agreement, any other rights or obligations of this Agreement may not be assigned to a third party without prior written notice from the other Party. Bluegiga shall, however, have the right to assign the rights and obligations of this Agreement to a third party in connection with the

assignment of its business or a substantial part thereof to that third party.

**11.4 GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be construed and governed by the laws of Finland. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finnish Central Chamber of Commerce by one (1) arbitrator in Helsinki in the English language. This clause shall not limit Parties' right to enforce the arbitration award in any court of law.

**11.5 WAIVER**

The failure of any Party to exercise any right or remedy under this Agreement shall not constitute a waiver of such right or remedy, and the waiver of any right or remedy based on any violation or breach of this Agreement by a Party shall not constitute a waiver of any rights or remedies based on any prior or subsequent violations or breaches.

**11.6 RIGHTS OF THIRD PARTIES**

Notwithstanding any other provision in this Agreement, a person or entity who/which is not a Party to this Agreement has no right to rely upon or enforce any term of this Agreement.

**11.7 SEVERABILITY**

If any provision of this Agreement is determined by a court or other governmental authority to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement.

**11.8 INDEPENDENT CONTRACTORS**

The Parties to this Agreement are independent contractors with regard to the Services described in this Agreement. Neither Party is an agent of the other Party with regard to the Services described in this Agreement and neither Party shall have any right to act as a representative of the other or to otherwise make binding transaction on behalf of the other Party. Nothing in this Agreement shall be deemed to create a partnership, joint venture or other relationship other than a vendor-customer relationship.

**11.9 PREVIOUS AGREEMENTS**

The Parties state that with respect to the subject matter hereof the Offer and its Appendices constitute the sole and exclusive understanding of the Parties in respect of the subject matter hereof and supersedes all prior agreements, arrangements or understandings between the Parties