

## **Blue Triangle Technologies, Inc.**

### **Terms of Use**

*Last updated March 15, 2021*

These terms govern your use of our website and our services (collectively, “**Services**”) and software that we include as part of the Services, including any applications, scripts, tags, instructions, and related documentation (collectively “**Software**”). By using the Services or Software, you agree to these terms. If you have entered into another written agreement with us concerning specific Services or Software, then that agreement is specific to you, and the terms of that agreement controls to the extent that there is any conflict with these terms.

#### **1. These Terms.**

1.1 **Eligibility.** You may only use the Services if you are 18 years of age or older and authorized to enter into contracts on behalf of the organization you represent.

1.2 **Privacy.** The Privacy Policy at <http://www.bluetriangletech.com/privacy-policy> governs any personal information you provide to us. By using the Services or Software you agree to the terms of the Privacy Policy, including its Cookie Policy.

1.3 **Availability.** Our web site is available worldwide, but all Services and Software may not be available in every country. We may block access to certain Services (or certain service features or content) in certain countries. It is your responsibility to make sure your use of the Services is legal where you use them. Services are not available in all languages.

1.4 **Software.** The Software is licensed, not sold. Any license to our users is governed by these terms, and does not assign or transfer any additional rights or any degree of ownership in any aspect of the Software.

1.5 **Modification.** We may modify or discontinue the Services, Software, or any portions or features of them at any time without liability to you or anyone else. However, we will make reasonable effort to notify you before we make substantial changes or discontinue your Services or use of the Software. We will also allow you a reasonable time to download your content. If we discontinue a Service in its entirety, then we will provide you with a pro rata refund for any prepaid and unused Services.

#### **2. Your Use of the Services.**

2.1 **License.** Subject to your compliance with these terms and the law, you may access and use the Services.

2.2 **Blue Triangle Technologies Intellectual Property.** We (and our licensors) remain the sole owner of all right, title, and interest in the Services and Software. We reserve all rights not granted under these terms.

2.3 **Backup.** Though the Services store their own relevant data in your account, we still recommend that you continue to back up your content regularly.

### **3. Your Content.**

**3.1 Ownership.** You retain all rights and ownership of your content and your data.

**3.2 User-Generated Content.** The Services allow you to create comments, instructions for your team, shared report templates, and other features that we will collect and that will become part of your user account with us. Others within your organization may be able to view and/or modify that content that you create, and we will not be responsible for any errors, omissions, or disruptions to the Services that may be caused by the inputs and customizations of you or your fellow users.

**3.3 Licenses to Your Content in Order to Operate the Services.** We require certain licenses from you to your content and data, to operate and enable the Services. When you input your own content and data to the Services, you grant us a non-exclusive, worldwide, royalty-free license to use, reproduce, display all such content and data in reports and online reporting systems accessible by your staff, and translate the content as needed.

**3.4 Our Access.** We will only access, view, or analyze any of your content to the extent necessary to perform the Services. This may include (a) responding to support requests; (b) detecting, preventing, or otherwise addressing fraud, security, unlawful, or technical issues; (c) assessing the performance of the Services within the context of your account; and (d) enforcing these terms.

**3.5 Sharing Your Content.** We do not monitor or control what others on your team do with your content, reporting functions, page naming, and other functions that may be customized within your account. Aggregated, anonymized data may be shared with others outside of your team for the sake of benchmarking the performance of sites within the same or similar industries. We will never disclose any revenue-related data for your site and company, either aggregated or otherwise. In the event that we have any revenue-related data, we will not disclose or share that without your express written consent.

**3.6 Feedback.** You have no obligation to provide us with ideas, suggestions, or proposals (“**Feedback**”). However, if you submit Feedback to us, then you grant us a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferrable, to use, reproduce, publicly display, distribute, modify, and publicly perform the Feedback.

**3.7 Account Information.** You are responsible for all activity that occurs via your account. Please notify us immediately if you suspect or become aware of any unauthorized use of your account. You may not (a) Share your account information (except with an authorized account administrator) or (b) use another person’s account.

### **4. Use of Software.**

#### **4.1 Subscription-Based Software License.**

If we provide the Software to you as part of your subscription to use the Services, then subject to your compliance with these terms, we grant you a non-exclusive license to install and use the Software, so long as your subscription is valid, and consistent with these terms. The permitted usage territory is worldwide, but excludes any U.S. embargoed countries and countries where you are prohibited from using the Software or the Services.

**4.2 Distribution from a Server.** If expressly permitted in a license document between us and you, you may copy an image of the Software onto a computer file server within your Intranet for the purpose of downloading and installing the Software onto computers within the same Intranet that is limited to you and your authorized employees and contractors, and does not include portions of the Internet, network communities open to suppliers, vendors, or service providers, or network communities open to the public or based on memberships or subscriptions, associations, and similar organizations.

**4.3 General License.** If the Software is provided as part of the Services without restrictions on subscription or number of devices, then subject to your compliance with these terms, we grant you a non-exclusive license to install and use the Software for the purpose of using and accessing of the Services, and consistent with these terms and related documentation accompanying the Software.

#### **4.4 Restrictions and Requirements.**

(a) **Proprietary Notices.** You must ensure that any permitted copy of the Software that you make contains the same copyright and other proprietary notices that appear on or in the Software.

(b) **Restrictions.** You must not:

(1) modify, port, adapt, or translate the Software;

(2) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software;

(3) use or offer the Software on a service bureau basis;

(4) (i) circumvent technological measures intended to control access to the Software or (ii) develop, distribute, or use with the Software, products that circumvent the technological measures; or

(5) rent, lease, sell, sublicense, assign, or transfer your rights in the Software, or authorize any portion of the Software to be copied onto another's device. If you purchase Blue Triangle Synthetic, Blue Triangle RUM or Blue Triangle eRevenueInsights for education (named user), then you may designate seats pursuant to the applicable documentation.

**4.5 Territory.** If you purchase more than one Software license, you must not install or deploy the Software outside of the country where you purchased the license unless otherwise permitted under any volume licensing program you have entered into with us. If you live in the European Economic Area, "country" means the European Economic Area. We may terminate the license granted herein or suspend the Blue Triangle Synthetic, Blue Triangle RUM or Blue Triangle eRevenueInsights subscription or access to the Services if we determine that you are using the Software or Services in violation of this Section.

**4.6 Activation.** The Software may require you to take certain steps to activate your Software or validate your subscription. Failure to activate or register the Software, validate the subscription, or a determination by us of fraudulent or unauthorized use of the Software may result in reduced functionality, inoperability of the Software, termination or suspension of your license and the subscription, and legal liability.

#### **5. User Conduct.**

**5.1 Misuse.** You must not misuse the Services or Software, or use it in any manner outside of these terms. For example, you must not:

- (a) copy, modify, host, sublicense, or resell the Services or Software;
- (b) enable or allow others to use the Service or Software using your account information;
- (c) use the content or Software included in the Services to construct any kind of database;
- (d) access or attempt to access the Services by any means other than our interface;
- (e) engage in behavior that violates anyone's Intellectual Property Right ("**Intellectual Property Rights**" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, and any other proprietary rights.);
- (f) post any comment or content that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
- (g) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (h) attempt to disable, impair, or destroy the Services, software, or hardware;
- (i) disrupt, interfere with, or inhibit any other user from using the Services,
- (j) violate applicable law.

## **6. Fees.**

You must pay any applicable taxes, and any applicable third-party fee (including, for example telephone toll charges, mobile carrier fees, ISP charges, data plan charges, credit card fees, foreign exchange fees). We are not responsible for these fees. We may take steps to collect the fees you owe us. You are responsible for all related collection costs and expenses. We reserve the right to discontinue all services and licenses to you in the event of non-payment of amounts owed to us.

## **7. Your Warranty and Indemnification Obligations.**

**7.1 Warranty.** By uploading content to the Services, implementing service tags, or creating an account on the Blue Triangle Technologies systems you agree that you have: (a) all necessary licenses and permissions, to do so, and (b) the rights necessary to grant the licenses in these terms.

**7.2 Indemnification.** You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to your content, your use of the Services or Software, or your violation of these terms.

## **8. Disclaimers of Warranties.**

**8.1 The Services and Software are provided "AS-IS." To the maximum extent permitted by law, we disclaim all warranties express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. We make no commitments about the content within the Services. We further disclaim any warranty that (a) the Services or Software will meet your**

requirements or will be constantly available, uninterrupted, timely, secure, or error-free; (b) the results that may be obtained from the use of the Services or Software will be effective, accurate, or reliable; (c) the quality of the Services or Software will meet your expectations; or that (d) any errors or defects in the Services or Software will be corrected.

**8.2 We specifically disclaim any liability for any actions resulting from your use of any Services or Software. You may use and access the Services or Software at your own discretion and risk, and you are solely responsible for any damage to your computer system or loss of data that results from the use and access of any Service or Software.**

## **9. Limitation of Liability.**

**9.1 Unless stated in the Additional Terms, we are not liable to you or anyone else for any special, incidental, indirect, consequential, or punitive damages whatsoever (even if we have been advised of the possibility of these damages), including those (a) resulting from loss of use, data, or profits, whether or not foreseeable, (b) based on any theory of liability, including breach of contract or warranty, negligence or other tortious action, or (c) arising from any other claim arising out of or in connection with your use of or access to the Services or Software. Nothing in these terms limits or excludes our liability for gross negligence, for our (or our employees') intentional misconduct, or for death or personal injury.**

**9.2 Our total liability in any matter arising out of or related to these terms is limited to US \$100 or the aggregate amount that you paid for access to the Service and Software during the three-month period preceding the event giving rise to the liability, whichever is larger. This limitation will apply even if we have been advised of the possibility of the liability exceeding the amount and notwithstanding any failure of essential purpose of any limited remedy.**

**9.3 The limitations and exclusions in this Section 9 apply to the maximum extent permitted by law.**

## **10. Termination.**

**10.1 Termination by You.** You may stop using the Services at any time. Termination of your account does not relieve you of any obligation to pay any outstanding fees.

**10.2 Termination by Us.** If we terminate these terms for reasons other than for cause, then we will make reasonable effort to notify you at least 30 days prior to termination via the email address you provide to us with instructions on how to retrieve your data. We may at any time terminate these terms with you if:

(a) you breach any provision of these terms (or act in a manner that clearly shows you do not intend to, or are unable to, comply with these terms);

(b) you fail to make the timely payment of fees for the Software or the Services, if any;

(c) we are required to do so by law (for example, where the provision of the Services or Software to you is, or becomes, unlawful); or

(d) we elect to discontinue the Services or Software, in whole or in part.

**10.3 Termination by Group Administrator.** Group administrators for a Service such as “Blue Triangle eRevenueInsights” may terminate a user’s access to a Service at any time. If your group administrator terminates your access, then you may no longer be able to access content, data, and reports that you or other users of the group have shared within that Service.

**10.4 Survival.** Upon expiration or termination of these terms, any perpetual licenses you have granted, your indemnification obligations, our warranty disclaimers or limitations of liabilities, and dispute resolution provisions stated in these terms will survive. Upon the expiration or termination of the Services, some or all of the Software may cease to operate without prior notice.

## **11. Investigations.**

**11.1 Screening.** We do not review all content uploaded to the Services, but we may use available technologies or processes to screen for certain types of illegal content or abusive behavior of any kind.

**11.2 Disclosure.** We may access or disclose information about you, or your use of the Services, (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.

**12. Export Control Laws. The Software, Services, content, and your use of the Software, Services, and content, are subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Software, Services, and content. You agree to comply with all the laws, restrictions, and regulations.**

## **13. Dispute Resolution.**

**13.1 Venue.** Any claim or dispute you may have against us must be resolved by a court located in Richmond, Virginia, U.S.A. You agree to submit to the personal jurisdiction of the applicable federal or state court in the City of Richmond, Virginia, U.S.A. for the purpose of litigating the claim or dispute, and waive all objections to jurisdiction, venue, or *forum non conveniens* arguments. The parties specifically disclaim the applicability of the U.N. Convention on Contracts for the International Sale of Goods.

**13.2 Injunctive Relief.** Notwithstanding the foregoing, in the event of your or others’ unauthorized access to or use of the Services or content in violation of these terms you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## **14. Software Terms.**

This section applies to specific Software and components. If there is any conflict between this section and other sections, then this section governs in relation to the relevant Software or components.

**14.1 Tag.** The code that is placed on your site to allow data collection.

**14.2 Blue Triangle Portal.** The web-accessible site where your reports and data can be viewed and displayed to the audience of your choosing.

## **15. Terms for Certain Countries.**

This section applies to specific jurisdictions. If there is any conflict between this section and other sections, then this section governs for the relevant jurisdiction.

### 15.1 European Economic Area.

(a) **Warranty.** If you obtained the Software in the European Economic Area (EEA), you usually reside in the EEA and you are a consumer (that is, your use of the Software is for business related purposes), then your warranty period with regard to the Software is the duration of your subscription. Our entire liability related to any warranty claim and your sole and exclusive remedy under any warranty will be limited to either, at our option, support of our Software based on the warranty claim, replacement of the Software, or if support or replacement is not practicable, refund of prepaid and unused subscription fee proportionate to the specific Software. Furthermore, while these terms apply to any damages claims you make in respect of your use of the Software, we will be liable for direct losses that are reasonably foreseeable in the event of our breach of this agreement. You should take all reasonable measures to avoid and reduce damages, in particular by making backup copies of the Software and its computer data.

(b) **Decompilation.** These terms do not limit any non-waivable right to decompile the Software that you may enjoy under the law. For example, if you are located in the European Union (EU), you may have the right under applicable law to decompile the Software if it is necessary to do so in order to achieve interoperability of the Software with another software program, provided that we have not made this information available. Under this circumstance, you must first ask us in writing to provide the information necessary to achieve this interoperability. In addition, the decompilation may only be performed by you or someone who may use the Software on your behalf. We have the right to impose reasonable conditions before providing the information. You may use the information we supply or that you obtain only for the purpose described in this paragraph. You may not disclose the information to any third party or use the information in a manner that infringes our copyright or a copyright of one or our licensors.

15.2 **Australia.** If you obtained the Software in Australia, then the following provision applies, notwithstanding anything stated to the contrary in these terms:

#### NOTICE TO CONSUMERS IN AUSTRALIA:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

**16. Notice to U.S. Government End Users.** For U.S. Government procurements, Software is a commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software – Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Software by the U.S. Government must be in accordance with license rights and restrictions described in these terms.

**17. Notification of Copyright Infringement.**

**17.1 DMCA.** We respect the Intellectual Property Rights of others and we expect our users to do the same. We will respond to clear notices of copyright infringement consistent with the Digital Millennium Copyright Act (“DMCA”).

**17.2 Take-Down Notice.** If you believe that your work has been infringed in connection with the Services, please provide written notification via regular mail or via fax (not via email or phone) to our Copyright Agent (contact information below) that contains all of the following elements:

- (a) A physical or electronic signature of the person authorized to act on behalf of the owner of the copyright interest that is alleged to have been infringed;
- (b) A description of the copyrighted work(s) infringed;
- (c) A description of where the content that you claim is infringing is located on the Services;
- (d) Information sufficient to permit us to contact you, such as your physical address, telephone number, and email address;
- (e) A statement by you that you have a good faith belief that the use of the content identified in your notice in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (f) A statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or are authorized to act on the copyright owner’s behalf.

Before you file the notification, please carefully consider whether or not the use of copyrighted material at issue is protected by the “fair use” doctrine, as you could be liable for costs and attorneys’ fees should you file a takedown notice where there is no infringing use. If you are unsure whether a use of your copyrighted material constitutes infringement, please contact an attorney. In addition, you may wish to consult publicly available reference materials such as those found at the U.S. Copyright website or at [www.chillingeffects.org](http://www.chillingeffects.org).

**17.3 Counter-Notice.** If you believe we disabled or removed access to your content as a result of an improper copyright infringement notice, please provide, pursuant to the DMCA, written notification via regular mail or via fax (not via email or phone) to our Copyright Agent (contact information below), which must contain all of the following elements:

- (a) A physical or electronic signature of the subscriber;
- (b) Identification of the content that was removed from the Services and the location of the Service on which the content appeared before it was removed;
- (c) A statement under penalty of perjury that you have a good faith belief that the content was removed or disabled as a result of mistake or misidentification of the content to be removed or disabled;
- (d) Information sufficient to permit us to contact you, such as your physical address, telephone number, and email address; and
- (e) A statement that you consent to jurisdiction of the Federal District court for the district where you reside (or of Richmond, Virginia if you reside outside of the United States) and that you will accept service of process from the person who provided notification under DMCA subsection (c)(1)(C) or an agent of the person.



Before you file a counter-notification, please carefully consider whether or not the use of the copyrighted material at issue is infringing, as you could be liable for costs and attorneys' fees in the event that a court determines your counter-notification misrepresented that the content was removed by mistake. If you are unsure whether use of the content at issue constitutes infringement, please contact an attorney. In addition, you may wish to consult publicly available reference materials such as those found at [www.chillingeffects.org](http://www.chillingeffects.org).

**17.4 Copyright Agent.** Our Copyright Agent for notice of claims of copyright infringement can be reached as follows:

By mail: Copyright Agent Blue Triangle Technologies Inc. 9097 Atlee Station Road Suite 304 Mechanicsville, VA 23116

By email: [ops@bluetriangletech.com](mailto:ops@bluetriangletech.com) By telephone: 804-226-0623

The Copyright Agent will not remove content from the Services in response to phone or email notifications regarding allegedly infringing content, since a valid DMCA notice must be signed, under penalty of perjury, by the copyright owner or by a person authorized to act on his or her behalf. Please submit the notifications by fax or ordinary mail only and as further described by this section. The Copyright Agent should be contacted only if you believe that your work has been used or copied in a way that constitutes copyright infringement and that the infringement is occurring on the Services. All other inquiries directed to the Copyright Agent will not be responded to.

## **18. Miscellaneous.**

**18.1 English Version.** The English version of these terms will be the version used when interpreting or construing these terms.

**18.2 Notice to Blue Triangle Technologies.** You may send notices to us to at the following address: Blue Triangle Technologies Inc., 9097 Atlee Station Rd. Suite 304, Mechanicsville, VA 23116, Attention: General Counsel.

**18.3 Notice to You.** We may notify you by email, postal mail, postings within the Services, or other legally acceptable means.

**18.4 Entire Agreement.** These terms constitute the entire agreement between you and us regarding your use of the Services and Software and supersede any prior agreements between you and us relating to the Services, except where there are separate and more specific written agreements in place, as referenced elsewhere in these terms.

**18.5 Non-Assignment.** You may not assign or otherwise transfer these terms or your rights and obligations under these terms, in whole or in part, without our written consent. We may transfer our rights under these terms to a third party.

**18.6 Severability.** If a particular term is not enforceable, the unenforceability of that term will not affect any other terms.

**18.7 Choice of Law.** Absent some explicit, written agreement to the contrary, your relationship is with Blue Triangle Technologies Inc., a United States company, and the Services and Software are governed

by the law of Virginia, U.S.A. You may have additional rights under the law. We do not seek to limit those rights to the extent prohibited by law.

**18.8 No Waiver.** Our failure to enforce or exercise any of these terms is not a waiver of that section.

**18.9 Refund Policy.** We do not offer refunds unless stated in your contract.