



TERMS OF SERVICE

These Terms are binding on any use of the Service and apply to You from the time that You are provided access to the Service.

The Governance Manager Service will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of the Governance Manager Service. Blue Zoo reserves the right to change these terms at any time, effective upon the posting of modified terms and Blue Zoo will make every effort to communicate these changes to You via email or notification via the Website. It is likely the terms of use will change over time. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By using the Service you acknowledge that You have read and understood these Terms and have the authority to act on behalf of any person for whom You are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom you use the Service.

These Terms were last updated on 22nd August 2012.

1. DEFINITIONS

Unless the context requires otherwise, the defined terms in this Agreement shall have the meanings set out below (and where the context so admits the singular shall include the plural and vice versa).

“Agreement” means these Terms of Use.

“Authorised User(s)” means any of the following who You give permission to use the Software as part of Governance Manager: (a) any of Your employees, consultants or independent contractors; (b) any third party who hosts the Software on Your behalf under an agreement with You for such hosting and who has read and agreed to abide by the terms of this Agreement; and (c) any other person who Blue Zoo authorizes in writing.

“Blue Zoo” means Blue Zoo Holdings Pty Ltd.

“Confidential Information” includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

“Channel Partner” means any business that Blue Zoo has engaged to distribute, resell or represent the Service.

“Customer Contact” means the person who represents the organisation that has acquired the right to access the Service.

“Data” means any data inputted by You or Authorised Users into the Website.

“Governance Manager” means the Service.

“Intellectual Property” means any information or Data that a party can claim an Intellectual Property Right.

“Intellectual Property Right” means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

“Licence” means the features and governance frameworks You have acquired the right to access.

“Maintenance” means the annual agreed fee You agree to pay for continued access to the Service.

“Service” means the online governance management services made available (as may be changed or updated from time to time by Blue Zoo) via the Website.

“Third Party Components” means software, utilities or Intellectual Property, licensed by Blue Zoo from a third party for incorporation into the Service.

“Third Party Services” means services provided by a third party.

“Website” means the Internet site at the domain governancemanager.com.au or any other site operated by Blue Zoo.

“You” means the Company Contact, and where the context permits, an Authorised User. **“Your”** has a corresponding meaning.



2. USE OF THE SERVICE

Blue Zoo grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your Licence. This right is non-exclusive, non-transferable, and limited by and subject to these Terms of Service. You acknowledge and agree that, subject to any applicable written agreement between You and the Authorised Users, or any other applicable laws:

- the Customer Contact determines who is an Authorised User and what level of user role access to the relevant organisation and Service that Invited User has;
- the Customer Contact is responsible for all Authorised Users' use of the Service;
- the Customer Contact controls each Authorised User's level of access to the relevant organisation and Service at all times and can revoke or change an Authorised User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Authorised User or shall have that different level of access, as the case may be;
- any dispute between a Customer Contact and an Authorised User regarding access to any organisation or Service, the Customer Contact shall decide what access or level of access to the relevant Data or Service that Authorised User shall have, if any.

3. YOUR OBLIGATIONS

3.1. PAYMENT OBLIGATIONS

Invoices for your Licence and ongoing Maintenance will be issued by Blue Zoo or their Channel Partner. Blue Zoo, or their Channel Partner, will continue invoicing You until the Agreement is terminated in accordance with clause 9.

All invoices will be sent to the Customer Contact, or a nominated Billing Contact whose details are provided by email. The Customer Contact or Billing Contact must pay or arrange payment of all amounts specified in any invoice by the due date for payment as specified on the invoice. You are responsible for payment of all taxes and duties in addition to the defined items.

3.2. GENERAL OBLIGATIONS

You must only use the Service and Website for Your own lawful internal business purposes, in accordance with these Terms and any notice sent by Blue Zoo or condition posted on the Website.

You will not use the Service or Website for organisations that:

- develop, produce, handle, maintain, store, detect, identify or disseminate chemical, biological or nuclear weapons, or of materials or equipment that could be used in such weapons or their missile delivery systems, or resell or export to anyone or any entity involved in such activity; or
- develop, produce, handle, maintain, store, detect, identify or disseminate nuclear systems.

You and Your Authorized Users will not sell, rent, lease, or transfer, or attempt to sell, rent, lease, or transfer, the Service or any part thereof, or Your entitlement to use the Services or any part thereof to any other person without the prior express written permission of Blue Zoo.

You and Your Authorised Users will cooperate with Blue Zoo and provide information requested by Blue Zoo to assist Blue Zoo in investigating or determining whether there has been a breach of this Agreement or a criminal act.

You hereby authorize Blue Zoo to cooperate with:

- law enforcement authorities in the investigation of suspected criminal violations;
- third parties in investigating acts in violation of this Agreement; and

- system administrators at Internet service providers, networks or computing facilities in order to enforce this Agreement.

Such cooperation may include Blue Zoo disclosing Your or Your Authorised Users contact information but will not include the provision of your data unless required by subpoena.

3.3. INTELLECTUAL PROPERTY RIGHTS

Where relevant, Intellectual Property Rights are generally acquired by Blue Zoo and provided to You free of charge. However, Blue Zoo reserves the right to pass on any charges related to the provision of Intellectual Property Rights on a case-by-case basis at Blue Zoo's sole discretion. Blue Zoo would first inform You via email to indicate what those charges are likely to be (as such charges may vary depending the Intellectual Property used in governance frameworks, what and how the owners for those rights charge for their use). You have the option to decide to discontinue use of affected governance frameworks at any time, or transition to an alternative if available. To exercise this option, you must give Blue Zoo sufficient prior notice you want to discontinue or change. Upon receiving such notice Blue Zoo will arrange for such changes to occur in the Service.

3.4. ACCESS CONDITIONS

You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Blue Zoo of any unauthorised use of Your passwords or any other breach of security and Blue Zoo will reset Your password and You must take all other actions that Blue Zoo reasonably deems necessary to maintain or enhance the security of Blue Zoo's computing systems and networks and Your access to the Services.

As a condition of these Terms, when accessing and using the Services, You must:

- not attempt to undermine the security or integrity of Blue Zoo's computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
- not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
- not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
- not transmit, or input into the Website, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
- not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

3.5. COMMUNICATION CONDITIONS

As a condition of these Terms, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).



When You make any communication on the Website, You represent that You are permitted to make such communication. Blue Zoo is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Services. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, Blue Zoo does reserve the right to remove any communication at any time in its sole discretion.

3.6. INDEMNITY

You indemnify Blue Zoo and its Channel Partners against all claims, costs, damage and loss arising from Your breach of any of these Terms or any obligation You may have to Blue Zoo, including (but not limited to) any costs relating to the recovery of any Licence or Maintenance fees that are due but have not been paid by You.

4. BLUE ZOO OBLIGATIONS

4.1. SERVICE AVAILABILITY

Whilst Blue Zoo intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason the Services are to be interrupted for longer periods than Blue Zoo would normally expect, Blue Zoo will use reasonable endeavours to publish details of proposed interruptions on the Website of the HelpDesk system.

An email subscription list is provided for all customers to subscribe to for Blue Zoo to provide notifications of proposed or unscheduled outages and the potential impacts. The initial Company Contact is subscribed to this list by default. To comply with the SPAM Act all emails sent from this system have a functional unsubscribe feature.

4.2. TECHNICAL PROBLEMS

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Blue Zoo. If You still need technical help, please check the support provided online by Blue Zoo on the Website or failing that email us at admin@governancemanager.com.au

4.3. DATA SECURITY AND AVAILABILITY

Blue Zoo take information security seriously and through an Information Security Policy, supporting standards, systems and security testing regime implements controls commensurate with the risk associated with the information in Governance Manager.

Blue Zoo has an Information Management standard that defines the processes and systems for appropriately managing information in Governance Manager its lifecycle. By default the retention period for information is seven years.

5. CONFIDENTIALITY AND PRIVACY

5.1. CONFIDENTIALITY

Unless the relevant party has the prior written consent of the other or unless required to do so by law:



- Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
- Each party's obligations under this clause will survive termination of these Terms.
- The provisions of these confidentiality clauses shall not apply to any information which:
 - is or becomes public knowledge other than by a breach of this clause;
 - is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - is independently developed without access to the Confidential Information.

5.2. PRIVACY

Blue Zoo maintains a privacy policy that sets out the parties' obligations in respect of personal information. You should read that policy at www.bluezoo.com.au/privacy and You will be taken to have accepted that policy when You accept these Terms.

6. INTELLECTUAL PROPERTY

6.1. GENERAL

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of Blue Zoo (or its licensors) unless agreed in a separate contract.

6.2. OWNERSHIP OF DATA

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Licence and Maintenance fees when due. You grant Blue Zoo a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of services to You.

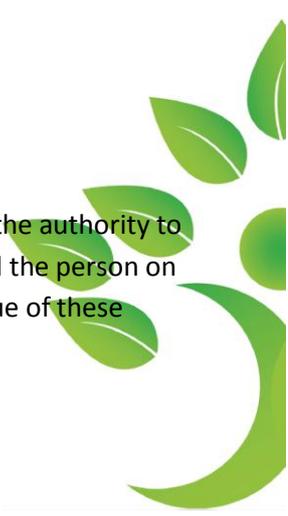
6.3. BACKUP OF DATA

If your Data is critical to the successful operations of Your business You must maintain copies of all Data inputted into the Service. Blue Zoo adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Blue Zoo expressly excludes liability for any loss of Data no matter how caused.

7. WARRANTIES AND ACKNOWLEDGEMENTS

7.1. AUTHORITY

You warrant that where You have registered to use the Service on behalf of another person, You have the authority to agree to these Terms on behalf of that person and agree that by registering to use the Service You bind the person on whose behalf You act to the performance of any and all obligations that You become subject to by virtue of these Terms, without limiting Your own personal obligations under these Terms.



7.2. ACKNOWLEDGEMENT

You acknowledge that:

- You are authorised to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorised to use the Service. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or that of anyone else).
- Blue Zoo has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:
 - You are responsible for ensuring that You have the right to do so;
 - You are responsible for authorising any person who is given access to information or Data, and you agree that Blue Zoo has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and
- You will indemnify Blue Zoo against any claims or loss relating to:
 - Blue Zoo's refusal to provide any person access to Your information or Data in accordance with these Terms; and
 - Blue Zoo's making available information or Data to any person with Your authorisation.
- The provision of, access to, and use of, the Services are on an "as is" basis and at Your own risk.
- Blue Zoo does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Blue Zoo is not in any way responsible for any such interference or prevention of Your access or use of the Services.
- It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
- Your organisation remains solely responsible for complying with all applicable regulatory and compliance requirements. It is Your responsibility to check that storage of and access to your Data via the Software and the Website will comply with laws applicable to you (including any laws requiring you to retain records).

7.3. NO WARRANTIES

Blue Zoo gives no warranty about the Services. Without limiting the foregoing, Blue Zoo does not warrant that the Services will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

7.4. CONSUMER GUARANTEES

You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services, the Website or these Terms.



8. LIMITATION OF LIABILITY

To the maximum extent permitted by law, Blue Zoo excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website.

If You suffer loss or damage as a result of Blue Zoo's negligence or failure to comply with these Terms, any claim by You against Blue Zoo arising from Blue Zoo's negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the Maintenance fees paid by You in the previous 12 months.

If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with the Termination Clause.

9. TERMINATION

9.1. PAID FEES

Blue Zoo will not provide any refund for any remaining prepaid period for Licence of Maintenance fees.

9.2. NO-FAULT TERMINATION

These Terms will continue for the period covered by the Licence and Maintenance fees paid or payable. At the end of each maintenance period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Maintenance fee when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period. If You terminate these Terms You shall be liable to pay all relevant fees on a pro-rata basis for each day of the then current period up to and including the day of termination of these Terms.

9.3. BREACH

If You:

- breach any of these Terms (including, without limitation, by non-payment of any fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- breach any of these Terms and the breach is not capable of being remedied; or
- You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction.

Blue Zoo may take any or all of the following actions, at its sole discretion:

- Terminate this Agreement and Your use of the Services and the Website;
- Suspend for any definite or indefinite period of time, Your use of the Services and the Website; or
- Suspend or terminate access to all or any Data.

For the avoidance of doubt, if payment of any invoice for fees is not made in full by the relevant due date, Blue Zoo may: suspend or terminate Your use of the Service, the authority for all or any of Your Organisations to use the Service, or Your rights of access to all or any Data.



9.4. ACCRUED RIGHTS

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- remain liable for any accrued fees and amounts which become due for payment before or after termination; and
- immediately cease to use the Services and the Website.

10. GENERAL

10.1. ENTIRE AGREEMENT

These Terms, together with the Blue Zoo Privacy Policy and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Blue Zoo relating to the Services and the other matters dealt with in these Terms.

10.2. WAIVER

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

10.3. DELAYS

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

10.4. NO ASSIGNMENT

You may not assign or transfer any rights to any other person without Blue Zoo's prior written consent.

10.5. GOVERNING LAW AND JURISDICTION

This Agreement is to be governed by and construed under the laws of the State of Western Australia, excluding any body of law governing conflicts of law. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from application to this Agreement. Any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, which the Parties are unable to resolve after good faith negotiations, shall be submitted first to the upper management level of the Parties.

The Parties, through their upper management level representatives shall meet within thirty (30) days of the dispute being referred to them and if the Parties are unable to resolve such disagreement or dispute within thirty (30) days of meeting, except to the extent specifically prohibited by applicable law in Your jurisdiction, such disagreement or dispute shall be settled by final and binding arbitration to be conducted in Perth Western Australia in accordance with the Commercial Rules of the Western Australian industrial Relations Commission ("Rules") and shall be heard by one arbitrator appointed in accordance with the said Rules and to be mutually agreed to by the Parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator.

If the provisions of the foregoing are prohibited by law in Your jurisdiction, the arbitration shall be: (i) held in Perth, Western Australia; (ii) settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"); and (iii) heard by one arbitrator appointed in accordance with the ICC Rules and to be mutually

agreed to by the Parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator. Each Party shall bear one half of the costs associated with the arbitration proceedings. No dispute between the Parties, or involving any person but You, may be joined or combined together, without the prior written consent of Blue Zoo.

Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. Notwithstanding the foregoing, Blue Zoo has the right to institute legal or equitable proceedings, including proceedings seeking injunctive relief, in a court of law for claims or disputes regarding: (i) amounts owed by You to Blue Zoo in connection with Your acquisition of Governance Manager or any portion thereof, if applicable; and (ii) Your violation or threatened violation of this Agreement.

You irrevocably waive any objection on the grounds of venue, forum non-convenience or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law and irrevocably consent and agree to the jurisdiction of the Courts located in the State of Western Australia for any such claims arising from or related to this Agreement. The Parties specifically agree that, in the event that there is a dispute under this Agreement and such dispute is to be resolved in a court of law, such dispute shall not be resolved by jury trial. The Parties hereby waive all rights to a trial by jury in any matter related to or arising from this Agreement.

10.6. SEVERABILITY

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

10.7. NOTICES

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Blue Zoo must be sent to admin@governancemanager.com.au or to any other email address notified by email to You by Blue Zoo. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

10.8. RIGHTS OF THIRD PARTIES

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.

10.9. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, neither Party shall be deemed in default of this Agreement for failure to fulfil its obligations when due to causes beyond its reasonable control. This provision shall not be construed as excusing non-performance of any obligation by either Party to make payment to the other Party under this Agreement.

