



BLUECARD SOFTWARE-AS-A-SERVICE (SAAS)

TERMS AND CONDITIONS

(Last Updated August 21, 2020)

The following terms and conditions apply to the legal agreement formed between BlueCart (“**Provider**”) and the customer either executing a Customer Order Form that is accompanied by or references this document or ordering directly through Provider’s Web Site (“**Customer**”).

1. DEFINITIONS. As used in this Agreement:

“**Agreement**” means the SaaS agreement between Customer and Provider consisting of these Terms and Conditions, any Order Form signed by Customer and Provider that accompanies or references this document, and any Statements of Work entered into by Customer and Provider hereunder.

“**Applicable Laws**” means all legislation, statutes, regulations, ordinances, rules, judgments, orders, decrees, rulings, and other requirements enacted, promulgated, or imposed by any governmental authority or judicial or regulatory body (including any self-regulatory body) at any level (e.g., municipal, county, provincial, state or national) that are applicable to or enforceable against a party or its personnel in relation to their activities under or pursuant to this Agreement.

“**Authorized Customer Entities**” means specific Customer-affiliated entities named in a Customer Order Form who are authorized to access and use the Service during the Subscription Term.

“**Authorized User(s)**” means end users of Customer and Authorized Customer Entities who have completed Provider’s online registration process or who otherwise receive a user ID or other access credentials from Provider or Customer authorizing them to access and use the SaaS. The Service is available only to legal entities and persons who are at least eighteen (18) years old and are otherwise capable of forming legally binding contracts under applicable law. You agree that you are not (a) a citizen or resident of a country in which use or participation is prohibited by law, decree, regulation, treaty or administrative act; (b) a citizen or resident of, or located in, a country or region that is subject to U.S. or other sovereign country sanctions or embargoes; or (c) an individual or an individual employed by or associated with an entity identified on the U.S. Department of Commerce’s Denied Persons or Entity List, the U.S. Department of Treasury’s Specially Designated Nationals or Blocked Persons Lists, or the Department of State’s Debarred Parties List or otherwise ineligible to receive items subject to U.S. export control laws and regulations, or other economic sanction rules of any sovereign nation.

“**Authorized Purpose(s)**” means those purposes set forth in a Customer Order Form or on Provider’s Web Site describing the purposes for which the applicable SaaS and associated Content are permitted to be used by Customer, Authorized Customer Entities, and their Authorized Users. If no Authorized Purpose is stated, the Authorized Purpose shall be limited to use of the SaaS in Customer’s and Authorized Customer Entities’ internal business operations.

“**Confidential Information**” means all non-public written or oral information, disclosed by either Party to the other, related to the business or operations of either Party or a third party that has been identified as confidential or that by the nature of the information or circumstances surrounding its disclosure ought reasonably to be understood as being confidential.

“**Content**” means any data, media, information and/or other type or form of content displayed, distributed or otherwise made available to a Party through or in connection with the SaaS or other Services, including User Content and Provider Content.

“**Customer Data**” means any data owned by Customer or an Authorized Customer Entity that is submitted to the Service for processing transmission, and/or storage.

“**Customer Order Form**” means an order form issued by Provider and executed by Customer and Provider setting forth the necessary information relating to the SaaS and/or other Services to be provided to Customer under this Agreement and the fees payable to Provider. For the sake of clarity, where applicable, the term “Customer Order Form” will include the ordering interface and forms used for purchases executed directly through Provider’s Web Site.

“**Data Privacy and Security Laws**” means all applicable federal, state, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, of or by any United States federal or state government entity, or any authority, department or agency thereof governing the privacy, data protection and security of Personally Identifiable Information and security breach notification relating to Personally Identifiable Information, and any other laws in force in any jurisdiction (regulatory or otherwise) in which the SaaS is being utilized, including Title V of the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338), as may be amended from time to time, and its implementing regulations, and the “Interagency Guidelines Establishing Standards for Safeguarding Customer Information” (Exhibit B to 12 CFR Part 364).

“**Including**” (and its derivative forms, whether or not capitalized) means including without limitation.

“**Intellectual Property Rights**” means the legal rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, publicly display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the rights to exclude others from using, making, having made, selling, offering to sell, and importing patented subject matter and to practice patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including privacy rights and any rights in databases recognized by applicable law.

“**Losses**” means, in connection with a Claim that is subject to defense and indemnification by a Party under this Agreement, all reasonable attorneys’ fees, reasonable costs of investigation, discovery, litigation and settlement, and any resulting liabilities, damages, settlements, judgments and awards, including associated taxes, interest and penalties.

“**Mobile App**” refers, if and when applicable, to proprietary client software, in object code form, that is made available by Provider for installation on mobile devices to allow interaction and use with the SaaS.

“**Professional Services**” means any professional services performed or contracted to be performed by Provider pursuant to a Statement of Work entered into by the Parties under this Agreement.

“**Provider Content**” means Content owned, originated or controlled by Provider that is made accessible to Customer and Authorized Customer Entities via the SaaS or other Services.

“**Provider’s Web Site**” means the web interface of the SaaS platform that Provider offers for interaction with and receipt of the Services.

“**SaaS**” means Provider’s proprietary web-based software-as-a-service platform and related services made available for use by Authorized Users under this Agreement, as identified on the applicable Customer

Order Form, including its technology components, such as Provider's Web Site, applicable Mobile App(s), and related documentation.

"Services" means, collectively, the SaaS, the Support Services, and any Professional Services performed or provided by Provider pursuant to this Agreement.

"Statement of Work" (or **"SOW"**) means a supplementary document in a mutually agreed form that is entered into by the Parties under this Agreement and describes Professional Services ordered by Customer from Provider. Upon execution and delivery of an SOW, it is deemed to form part of this Agreement.

"Subscription Fees" means the non-recurring and recurring fees payable by Customer to Provider for the SaaS and associated Support Services, as set forth in the relevant Customer Order Form, which shall be payable in accordance with the payment terms set forth in the Customer Order Form. Unless and except as otherwise expressly stated in this Agreement, the Subscription Fees are non-cancellable and non-refundable.

"Subscription Term" means the period during which Customer's Authorized Users are permitted to access and use the SaaS, as set forth in the applicable Customer Order Form.

"Support Services" means the support services described in Section 3.

"Update" means any improvement, enhancement, modification and/or changes to the SaaS offered or provided by Provider to its subscribers at no charge.

"User Content" means any Content submitted, posted or displayed by Authorized Users of the SaaS or the Mobile App.

"User Data" means any data or information (other than User Content) received or collected by Provider concerning Authorized Users of the SaaS or the Mobile App, including data provided by Authorized Users to register to use the SaaS or a Mobile App.

2. ACCESS TO AND USE OF THE SAAS.

2.1. Limited-Purpose Access Grant. Subject to Customer's and its Authorized Users' continuing compliance with this Agreement and payment of the applicable fees, Provider hereby grants to Customer a limited, personal, non-exclusive, non-transferable right for Authorized Users of Customer and any other Authorized Customer Entities to access the features and functions of the SaaS during the Subscription Term, solely through Provider's Web Site or Mobile App and solely for the Authorized Purpose(s). This access grant may not be sublicensed, in whole or in part. The scope of Customer's use of the SaaS is subject to the terms and conditions of this Agreement, including any usage or other parameters or limitations set forth in the applicable Customer Order Form.

2.2 Access Protocols. On or as soon as reasonably practicable after the execution of this Agreement, Provider shall provide to Customer the necessary access credentials and protocols to allow Authorized Users to access the SaaS (the **"Access Protocols"**). The Parties further agree that prior to installing the Mobile App, any Authorized User shall be required accept an End User License Agreement (**"EULA"**) to be provided upon download of the Mobile App. Customer acknowledges and agrees that, as between Customer and Provider, Customer shall be responsible for all acts and omissions of Authorized Users, including any act or omission by an Authorized User, which, if undertaken by Customer, would constitute a breach of this Agreement and any act by a person (whether or not an Authorized User) using Customer's Access Protocols. Customer shall undertake reasonable efforts to make all Authorized Users aware of the provisions of this Agreement that are applicable their use of the SaaS and shall cause them to comply with such provisions.

2.3. Account Administration. Customer shall designate at least one Authorized User to act as an administrator who will act as Customer's principal point of contract with Provider for purposes of this Agreement.

2.4. User Content. The SaaS may enable Customer's Authorized Users to search for, find, store, manage and use User Content of interest that is provided or made accessible through the SaaS. Customer acknowledges that Provider does not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, reliability or other attributes of any User Content, nor does Provider review or attempt to verify the accuracy or currency of any User Content. As between Customer and Provider, Customer is solely responsible for (i) determining the suitability of any User Content for its intended use by Customer and its Affiliates, and (ii) as necessary for its intended use, verifying the authenticity, integrity, and accuracy of the User Content prior to using it. Provider has no obligation to preview, verify, flag, modify, filter or remove any User Content. Customer may remove any User Content at any time in its sole discretion. In the event Provider reasonably believes any User Content to be harmful, inaccurate, unlawful, or otherwise objectionable, it will promptly notify Customer in writing and Customer will remove or replace the objected-to User Content. If Customer fails to replace or remove objected-to content within ten (10) days following receipt of written notice by Provider, Provider may remove or disable access to the objected-to content in its sole discretion, but is not responsible for any failures or delays in removing or disabling access to any User Content unless otherwise provided herein, including User Content that may be considered harmful, inaccurate, unlawful or otherwise objectionable.

2.5. Compliance. (a) Customer's and its Authorized Users' access to and use of the SaaS is subject to their continuing compliance with all of the following: (a) the terms and conditions set forth in this Agreement; (b) Provider's online Terms of Use available on Provider's Web Site; (c) third party service terms and conditions governing any Content accessed through the SaaS that is published or distributed by a third-party web site, and (d) Applicable Laws, including Data Privacy and Security Laws. In the event of a conflict between this Agreement and the online Terms of Use, this Agreement shall prevail and control. (b) In addition to complying with applicable Data Privacy and Security Laws, Provider will employ commercially reasonable security and access controls designed to protect the types of data collected and stored by the Service, including Personally Identifiable Information. (c) We do not assert ownership over any of your content. Rather, subject to the rights granted to us and our users in these Terms, you retain full ownership of all of your content and any intellectual property rights or other proprietary rights thereto. You understand and agree that you are solely responsible for all of your content. By uploading your content on the Service, you grant BlueCart a nonexclusive, transferable, fully paid, worldwide license to use, copy, reproduce, process, adapt, publish, transmit, host and display your content for the purpose of (i) providing you and other users the Service and associated support; and (ii) analyzing and improving the operation of the Service. Notwithstanding anything to the contrary herein, you agree that BlueCart may obtain and aggregate technical and other data about your use of the Service that is non-personally identifiable with respect to you (**"Aggregated Anonymous Data"**), and BlueCart may use the Aggregated Anonymous Data to improve, support and operate the Service and otherwise for any business purpose during and after the term of this Agreement. For clarity, this does not give BlueCart the right to identify you as the source of any Aggregated Anonymous Data (d) You authorize BlueCart to store copies of any or all of your content as we deem necessary in order to facilitate the operation of the Service. You represent and warrant that you have all rights, consents and/or permissions necessary to grant the licenses in the previous paragraph, including under any and all copyright, trademark, and other intellectual property rights, as well as any moral rights, rights of privacy, rights of publicity and similar rights of any type in or to your content. You may not upload to or otherwise make available on the

Service any content for which you do not have all necessary rights, licenses, consents or permissions needed to so make available such content on the Service. If you elect to utilize any third party application in connection with your use of the Service, by doing so you are consenting to your content being shared with such third party application. To understand how such third party application provider utilizes your content and other information, you should review their privacy policy.

2.6. Restrictions. Customer agrees not to act outside the scope of the rights that are expressly granted by Provider in this Agreement. Further, Customer will not (i) use the SaaS in any manner that is inconsistent with this Agreement; (ii) access or use the SaaS or in order to develop or support, or assist another party in developing or supporting, any products or services competitive with the SaaS; (iii) decompile, reverse engineer (unless required by law for interoperability), or use any other method in an attempt to view or recreate any of the source code of the SaaS or extract any trade secrets from it; (iv) use the SaaS to operate the business of a third party or to process data or content provided by a third party for the operation of a third party's business, or otherwise use the SaaS on a third party's behalf, or to act as a service bureau or provider of application services to any third party; (v) knowingly or intentionally re-use, disseminate, copy, or otherwise use the SaaS or associated Content in a way that infringes, misappropriates, or violates any trademark, copyright, patent, trade secret, publicity, privacy or other right of Provider or any third party; or (vi) sell, lend, lease, assign, transfer, pledge, permit a lien upon, or sublicense any of the rights granted by this Agreement with respect to the SaaS.

2.7. No Interference with Service Operations. Customer and its Authorized Users will not take any action designed or intended to: (a) interfere with the proper working of the SaaS; (b) circumvent, disable, or interfere with security-related features of the SaaS or features that prevent or restrict use, access to, or copying the SaaS or any Content or other data, or that enforce limitations on use of the SaaS or Content; or (c) impose (or which may impose, in Provider's sole discretion) an unreasonable or disproportionately large load on the SaaS infrastructure. The Service is not currently intended to be used by any government or public entities or any individuals in their capacity as employees or contractors of a government or public entity. If you are a government user or otherwise accessing or using the Service in your capacity as an employee of a government or public entity, please contact BlueCart at legal@BlueCart.com.

2.8. Access and Use of the SaaS from Outside the U.S. The SaaS is offered for use in the U.S. and any other territory set forth in the Customer Order Form. As between Customer and Provider, Customer is solely responsible for compliance with Applicable Laws relevant to its Authorized Users accessing or using the SaaS while outside the U.S. and such other territory. Notwithstanding the foregoing, Provider will at all times comply with Applicable Laws in providing Services.

3. SUPPORT SERVICES; PROFESSIONAL SERVICES.

3.1. Technical Support. At no additional charge and during Provider's normal business hours (which are 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding Provider-designated holidays unless otherwise specified in the applicable Customer Order Form), Provider will provide reasonable technical support and assistance for Authorized User requests by telephone (202) 798-2278 or sent via email to support@bluecart.com. Provider may also offer upgraded support services for an additional fee.

3.2. Updates. Customer will be given access to Updates of the SaaS that Provider implements during the Subscription Term. Customer acknowledges, however, that Provider may in the future offer optional value-added functions, features, or other capabilities for a separate fee.

3.3. Scheduled Maintenance. Provider reserves the right to take down applicable servers hosting the SaaS to conduct scheduled and emergency maintenance. Provider will use commercially reasonable efforts to perform scheduled maintenance outside regular business hours and will provide at least 24 hours' advance notice for nonemergency maintenance. Provider will not be responsible for any damages or costs incurred by Customer due to unavailability of the SaaS during scheduled or emergency maintenance.

3.4. Professional Services. If Provider has agreed to perform Professional Services for Customer or an Authorized Customer Entity under this Agreement, the Parties shall prepare and sign a Statement of Work describing the Professional Services to be performed and setting forth any other pertinent details, including the locations at which the Professional Services will be performed, the planned schedule of performance, the deliverables (if any) to be produced by Provider and delivered to Customer, the amount and manner of payment of Provider's fees for the Professional Services, and any associated responsibilities of Customer or Authorized Customer Entities relating to the Professional Services. Customer's obligation to pay the Subscription Fees set forth in an Order Form is not dependent on Provider's performance of any Professional Services pursuant to an SOW unless otherwise agreed by the Parties.

3.5 BlueCart Marketplace and Third-Party Links. Some parts of the Service are supported by sponsored links from advertisers and display offers that may be custom matched to you based on information stored in the Service or queries made through the Service or other information. In connection with BlueCart, the Service will provide links or send emails to other web sites belonging to advertisers and other third parties. BlueCart does not endorse, warrant, guarantee, or make any representation regarding the products or services available through the BlueCart Offers (or any other third-party products or services advertised on or linked from our site), whether or not sponsored. In addition, BlueCart is not an agent or broker or otherwise responsible for the activities or policies of those web sites. BlueCart does not guarantee that the terms of sale or offer posted on the Service by or for any particular advertiser or other third party are actually the terms that may be offered to you if you pursue the offer or that they are the best terms or price available in the market. BlueCart does not share Supplier information (product catalog, prices, etc.) with other Suppliers on our platform. Suppliers' product lists and prices are only visible to Restaurants who are potential buyers of your products. If you become aware of any unauthorized use of your Registration Information, you agree to notify BlueCart immediately.

4. FEES.

4.1. Fees Generally. Provider's fees for the Services are as set forth in the applicable Order Form or, as applicable, on the online purchasing interface, and shall be payable as stated therein. If any payment is not made in full when due, the overdue balance will be subject to a late payment charge of 5%, plus interest at the rate of 1.5% per month, prorated daily (or the maximum legal rate if less). We may choose to offer additional value-added Services in addition to the base Service for a fee. If we do so, the website will identify the chargeable Services and state the associated fees, terms and methods of payment. Quoted fees for chargeable additional Services are exclusive of applicable taxes, which will be separately itemized on our statement. Fees for chargeable additional Services are noncancellable and nonrefundable.

4.2. Fees for Additional Services. As part of the chargeable Services contemplated in Section 4.1 above, Provider will provide (a) optional payment processing services for business-to-business orders executed through Provider's Web Site, and (b) a BlueCart Digital Storefront platform for vendors to list and sell their products to consumers. For all purchases executed using either of the services described in Sections 4.2(a) or 4.2(b) above, Provider will charge the purchaser a

transaction processing fee of one percent (1%). This fee will be in addition to any fees charged by third-party payment processors (e.g., ACH or credit card fees).

5. ALLOCATIONS OF RISK.

5.1. Representations and Warranties. (a) Each Party represents to the other (i) that the execution and performance of its obligations under this Agreement will not conflict with or violate any provision of Applicable Law or any other agreement or order by which the representing Party is bound; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms. (b) Provider warrants that any Professional Service performed by Provider under this Agreement will be performed in a good and workmanlike manner in accordance with prevailing industry standards.

5.2. DISCLAIMERS. (a) CUSTOMER REPRESENTS THAT IT IS ENTERING THIS AGREEMENT WITHOUT RELYING UPON ANY PROVIDER REPRESENTATION OR WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, SYSTEM RELIABILITY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT, AND ALL WARRANTIES THAT MAY OTHERWISE BE IMPLIED. NO WARRANTIES ARE MADE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.

(b) CUSTOMER ASSUMES COMPLETE RESPONSIBILITY, WITHOUT ANY RECOURSE AGAINST PROVIDER, FOR THE SELECTION OF THE SAAS TO ACHIEVE CUSTOMER'S INTENDED RESULTS AND FOR ITS USE OF THE RESULTS OBTAINED FROM THE SAAS IN CUSTOMER'S BUSINESS. CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED FROM USE OF THE SAAS, INCLUDING THE COMPLETENESS, ACCURACY, AND CONTENT OF SUCH RESULTS. PROVIDER DOES NOT WARRANT THAT THE SAAS WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OPERATION OF THE SAAS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

(c) THE SAAS IS NOT DESIGNED OR PERMITTED TO BE USED IN OR FOR HIGH-RISK OR HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SAAS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "**HIGH RISK ACTIVITIES**"). PROVIDER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE SAAS FOR HIGH RISK ACTIVITIES.

5.3. Indemnification of Customer by Provider. Provider agrees to defend, indemnify, and hold harmless Customer and its Affiliates from and against all third-party claims and actions (collectively, "**Claims**" and individually, a "**Claim**"), that may, at any time, arise out of or relate to (a) a breach or alleged breach by Provider of any of its representations given in Section 5.1(a); or (b) a Claim that the SaaS or any Provider Content (excluding, however, User Content) provided by Provider hereunder or Customer's use of same in accordance with the terms hereof infringes any third party's Intellectual Property Rights; or (c) a Claim arising with respect to Provider's posting or displaying Provider Content on Provider's Web Site; and, in each case, associated Losses.

5.4. Indemnification of Provider by Customer. Except for any Claims in respect of which Provider is obligated to indemnify Customer under

Section 5.3, Customer agrees to defend, indemnify and hold harmless Provider and its Affiliates from and against all Claims, that may, at any time, arise out of or relate to: (a) use of the SaaS or any Content by or on behalf of Customer or an Authorized Customer Entity other than in accordance with this Agreement; (b) the posting, display, distribution, broadcast or other use of User Content by or on behalf of Customer or an Authorized Customer Entity, including Claims that any such use infringes or otherwise violates the rights of any third party, including Intellectual Property Rights, privacy, publicity or other personal or proprietary rights, or that the User Content posted, displayed, distributed, broadcast or otherwise published contains libelous, defamatory or otherwise injurious or unlawful material; and, in each case, associated Losses.

5.5. Indemnification Procedures. If any third party makes a Claim covered by Section 5.3 or Section 5.4 against an indemnified Party (the "**Covered Party**") with respect to which the Covered Party intends to seek indemnification under this Agreement, the Covered Party shall give prompt written notice of the Claim to the indemnifying Party, including a brief description of the amount and basis for the claim, if known. Upon receiving such notice, the indemnifying Party shall be obligated to defend the Covered Party (and its indemnitees) against the Claim, and shall be entitled to assume control of the defense and settlement of the Claim. The Covered Party may participate in the defense and settlement of the Claim at its own expense, using its own counsel, but without any right of control. The indemnifying Party shall keep the Covered Party reasonably apprised as to the status of the Claim. Neither the indemnifying party nor any Covered Party shall be liable for any settlement of a Claim made without its consent. Notwithstanding the foregoing, the Covered Party shall retain responsibility for all aspects of the Claim that are not subject to indemnification by the indemnifying Party hereunder.

5.6. Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5.6, NEITHER PARTY SHALL HAVE ANY LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, NOR ANY LIABILITY FOR LOST PROFITS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY, OR BUSINESS INTERRUPTION, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING THEORIES OF CONTRACTUAL LIABILITY, TORT LIABILITY (INCLUDING NEGLIGENCE), OR STRICT LIABILITY), EVEN IF THE LIABLE PARTY KNEW OR SHOULD HAVE KNOWN THAT THOSE KINDS OF DAMAGES WERE POSSIBLE. EACH PARTY'S MAXIMUM CUMULATIVE LIABILITY FOR ALL OCCURRENCES UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE INJURED PARTY'S ACTUAL DIRECT DAMAGES, CAPPED AT WHICHEVER OF THE FOLLOWING AMOUNTS IS GREATER: US\$1,000,000 OR THE TOTAL AMOUNT PAID BY CUSTOMER TO PROVIDER UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS DO NOT APPLY TO A PARTY'S OBLIGATIONS WITH RESPECT TO THIRD PARTY CLAIMS FOR BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO TANGIBLE PERSONAL PROPERTY, OR FOR WHICH INDEMNIFICATION IS GIVEN UNDER SECTION 5.3 OR 5.4, OR TO CLAIMS BASED ON BREACH OF CONFIDENTIALITY, INTENTIONAL BREACH OF THIS AGREEMENT, OR WILLFUL MISCONDUCT. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO THE EXTENT THAT THE LIABLE PARTY IS NOT PERMITTED TO DISCLAIM (OR, AS APPLICABLE, LIMIT) ITS LIABILITY UNDER APPLICABLE LAW.

6. DURATION AND TERMINATION.

6.1. Duration of Agreement. This Agreement commences on the Subscription Term start date set forth in the first Customer Order Form executed by both Parties and continues until all Customer Order Forms entered into by the Parties have expired or been terminated in accordance with this Agreement.

6.2. Termination. Either Customer or Provider may terminate this Agreement, and all Customer Order Forms or only affected Customer Order Forms (a) for cause upon written notice to the other Party if the other Party has committed a material breach of this Agreement and the breach remains uncured 30 days after the breaching party has received written notice of the breach from the non-breaching party, or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Notwithstanding the foregoing, Customer may terminate any Customer Order Form at any time upon written notice to Provider for any reason or no reason at all provided that all fees owed under the applicable Customer Order Form as of the date of termination are paid in accordance with its terms.

6.3. Effect of Termination on Fees. If this Agreement is terminated by Customer pursuant to Section 6.2, any pre-paid fees for the unused portion of the terminated Subscription Term will be refunded to Customer. In all other cases, all fees paid or payable as of the date of termination are non-cancellable and non-refundable.

6.4. Other Effects of Termination. Effective immediately upon expiration or termination of this Agreement, (i) all rights granted under this Agreement will become void, (ii) Customer shall cease all use of the SaaS, and (iii) neither Party will have continuing rights to use any Confidential Information of the other Party or to exercise any Intellectual Property Rights of the other Party that were licensed under this Agreement. However, Customer shall have 30 days after any such expiration or termination to download or otherwise obtain an extract of any Customer Data stored by the Service at the time of expiration or termination.

6.5. Survival. Any provision of the Agreement that contemplates or governs performance or observance subsequent to its termination or expiration will survive the expiration or termination of this Agreement (or the applicable Customer Order Form) for any reason.

7. PROPRIETARY RIGHTS.

7.1. Services and Provider Content. The Services (including the SaaS) and Provider Content, and all Intellectual Property Rights in and to them, are and shall remain owned by Provider (and its licensors, as applicable) and are protected by copyright, trademark, patent, trade secret and other laws and treaties. Subject to the terms and conditions of this Agreement, Provider hereby grants Customer and Authorized Customer Entities a limited, personable, revocable, non-sublicensable and non-transferable license for their Authorized Users to access and use the functions and features of the SaaS during the Subscription Term solely for the Authorized Purpose(s). Any derivative work Customer, an Authorized Customer Entity, or any Authorized Users may create of any part of the SaaS or Provider Content, and all rights therein, shall be owned solely by Provider. To that end, Customer hereby irrevocably transfers and conveys to Provider, without further consideration, all right, title and interest that Customer or any Authorized User may have or acquire in any such derivative work.

7.2. User Content License. Customer hereby grants to Provider a nonexclusive, non-transferable right and license to access, use, host, copy, display, process, transmit, and deliver the User Content as necessary or convenient for Provider to comply with its obligations and exercise its rights under this Agreement.

7.3. Trademarks. If Provider agrees to create, at Customer's request, any Customer-branded or co-branded user interfaces through which Authorized Users will access the SaaS, Customer hereby grants to Provider during the Subscription Term a non-exclusive, worldwide, royalty-free license to use and display the Customer's name, logo and other trademarks ("**Customer Trademarks**") designated by Customer on such user interface(s). In such event, Provider will use the relevant Customer Trademarks in accordance with Customer's then-current

trademark usage guidelines, if any, provided by Customer to Provider and only for the agreed purposes. Subject to the foregoing license, Customer will retain all Intellectual Property Rights that it may have in and to the Customer Trademarks, and all use thereof by Provider shall inure to the sole benefit of Customer.

7.4. Feedback. If Provider receives from Customer or any of its Authorized Users any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the Services or any other Provider products, offerings or services ("**Feedback**"), Provider may use, disclose and exploit such Feedback without restriction and without paying any royalties or other compensation, including to improve the Services and to develop, market, offer, sell and provide other products and services.

7.5. No Implied Licenses by Provider. Customer acknowledges that there are no licenses granted by Provider by implication under this Agreement. Provider reserves all rights that are not expressly granted herein. Customer acknowledges that, as between the Parties, Provider owns all Intellectual Property Rights and proprietary interests that are embodied in, or practiced by, the SaaS or other Services, with the exception of Intellectual Property Rights in or to Customer Data or to User Content that may be distributed through the SaaS.

8. CONFIDENTIALITY OBLIGATIONS; PUBLICITY. All activities of the parties under or in relation to this Agreement are subject to the confidentiality terms attached hereto as Exhibit A. Neither Party may use the name of the other in any published advertising or publicity materials without the prior written consent of the other party. However, and notwithstanding anything to the contrary in Exhibit A, Provider may include Customer's name on Provider's customer list and, subject to Customer's prior written review and approval, may describe briefly, and in general terms, the nature of the services provided by Provider to Customer.

9. GENERAL.

9.1. Governing Law. The validity, construction, and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the internal laws of the State of Delaware without regard to principles of conflicts of laws.

9.2. Force Majeure. Notwithstanding any other provision of this Agreement, no party to the Agreement shall be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance (except for the payment of money) due to any cause beyond the reasonable control of, and without fault or negligence by, such party or its officers, directors, employees, agents or contractors.

9.3. Insurance. Provider shall have and maintain in force throughout the Subscription Term insurance coverage in types and amounts customarily maintained by reputable companies in the same or similar line of business as Provider.

9.4. Dispute Resolution. A party may, without waiving any remedy under this Agreement, seek from any court with jurisdiction, interim or provisional equitable relief necessary to protect such party's rights or property. Any civil action seeking injunctive relief or otherwise related to this Agreement will be instituted and maintained exclusively in the federal or state courts situated in the State of New York. Each Party expressly waives any right to a trial by jury in any action or proceeding brought by or against either Party under this Agreement.

9.5. Notice. All notices required or permitted under this Agreement will be in writing and sent by certified mail, return receipt requested, or by reputable oversight courier, or by hand delivery. The notice address for Provider and Customer shall be their respective addresses specified in the applicable Customer Order Form. Any notice sent in the manner sent forth above shall be deemed sufficiently given for all purposes hereunder (i) in the case of certified mail, on the second business day after deposited in the U.S. mail and (ii) in the case of

overnight courier or hand delivery, upon delivery. Either party may change its notice address by giving written notice to the other party by the means specified in this Section.

9.6. Construction; Headings. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or arbitrator by reason of such Party having or being deemed to have structured or drafted such provision. The headings in this Agreement are for reference purposes only and shall not be deemed to have any substantive effect.

9.7. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the Parties agree to replace it with an enforceable provision reflecting the intent of the original provision as nearly as possible in accordance with applicable law, and the remaining provisions of this Agreement will remain in full force and effect.

9.8. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not affect in any way the full right to require the performance at any subsequent time. The waiver by either Party of a breach of any provision of this Agreement shall not be taken or held to be a waiver of the provision itself. Any course of performance shall not be deemed to amend or limit any provision of this Agreement.

9.9. Entire Agreement; Amendments. This Agreement (including all Statements of Work and Customer Order Forms entered under it) constitutes the entire agreement between Provider and Customer with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants, or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the Parties with respect to such matter. This Agreement may be amended only by an instrument in writing executed by the Parties' duly authorized representatives.

9.10. Counterparts; Signatures. This Agreement may be signed in counterparts with the same effect as if the signatures were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy of a Party's signature made by reliable means shall be sufficient to bind such Party.

10. ACCESS AND INTERFERENCE.

You agree that you will not: Use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology to access, acquire, copy or monitor the Service or any portion of the Service without BlueCart's express written consent, which may be withheld in BlueCart's sole discretion; Use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search BlueCart, other than the search engines and search agents available through the Service and other than generally available third-party web browsers (such as Microsoft Internet Explorer); Post or transmit any file which contains viruses, worms, Trojan horses or any other contaminating or destructive features, or that otherwise may interfere with the proper working of BlueCart or the Service; or Attempt to decipher, decompile, disassemble, or reverse-engineer any of the software comprising or in any way making up a part of BlueCart.com, the BlueCart mobile application or the Service

[End of Terms and Conditions]