



SOFTWARE AS A SERVICE SUBSCRIPTION TERMS AND CONDITIONS

These SAAS Subscription Terms and Conditions (the “Agreement”), dated as of the date of acceptance by Customer, govern the procurement of and use by the customer to whom the Order Form (as defined below) is addressed (“Customer”) from Blue Tent Marketing, LLC, a Colorado limited liability company (the “Service Provider”) of the software services described herein or in any related document (the “SAAS Services”). This Agreement includes and incorporates by reference each order form that provides the type, payment terms and additional terms and conditions for the SAAS Services offered by Service Provider (each, an “Order Form”).

1. ***Acceptance of Terms and Conditions; No Additional Terms.*** Any subscription or license for any SAAS Services, as well as any quotation or order confirmation for any SAAS Services, is expressly conditioned upon the acceptance of this Agreement by the Customer. This Agreement governs any quotations, order confirmations and all transactions between Service Provider and the Customer and no additional or different terms and conditions will apply to a quotation, order confirmation or sale or be binding upon Service Provider. Service Provider objects to any proposal or agreement provided by Customer that includes different or additional terms that vary from this Agreement, and any such proposal or agreement is disallowed and shall be of no effect. Customer specifically waives any terms or conditions additional to or different from this Agreement by ordering or accepting all or any portion of the SAAS Services.

2. ***Provision of SAAS Services; Payment Terms.***

(a) Subject to the terms of this Agreement, Service Provider agrees to provide the SAAS Services described in each Order Form during the Term of Service (as defined below) solely for its internal business purposes, and Customer agrees to pay for the SAAS Services and comply with the terms and conditions set forth in this Agreement.

The fees for the SAAS Services shall be as shown in the Order Form. Subsequent purchases of subscriptions for SAAS Services shall be made only from Service Provider, and shall be subject to the terms and conditions of this Agreement. All fees and other amounts owed under this Agreement shall be due and payable in full in U.S. currency upon receipt of the applicable invoice; provided, however, the initial deposit set forth in the Order Form shall be due upon acceptance of this Agreement. All fees not paid in full within thirty (30) days of the date of the applicable invoice shall bear interest at the lesser of: (a) two percent (2%) per month; or (b) the highest rate allowed by applicable law. All payments shall be subject to Service Provider’s then-current billing, invoice and order acceptance policies. Customer shall have no right of offset or

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withholding under this Agreement. All fees, and other amounts owed under this Agreement are exclusive of all state, local, and other taxes, or other taxes or charges (other than income taxes of Service Provider) directly applicable to the licensing, support or use of the SAAS Services.

3. **Term of Service; Users.** The “Term of Service” for the SAAS Services is indicated in the Order Form for the SAAS Services. The SAAS Services may be accessed and used only by the users specified in the applicable Order Form. For each user, Customer will be provided a user name (User ID) and password, which enables that user to access and use the SAAS Services specified in the applicable Order Form. Following expiration of the initial Term of Service, the Term of Service will automatically renew for successive periods, the length of which will be as specified in the Order Form, unless and until either party gives the other party notice of non-renewal at least thirty (30) days prior to the next scheduled renewal date. Each party may elect early termination of the SAAS Services solely as permitted in this agreement.

4. **Grant of License.** Service Provider grants to Customer a limited, non-exclusive, terminable, non-transferable, non-sublicenseable license to access the SAAS Services specified in the applicable Order Form, and to use such SAAS Services during the Term of Service, subject to the terms set forth in this Agreement. In addition to the terms set forth elsewhere in this Agreement (including the Order Form), the following terms shall apply to Customer’s use of the SAAS Services:

(a) Customer must use the SAAS Services only (a) in a manner and for the purposes for which they were designed, (b) in accordance with the terms of this Agreement, and in accordance with all applicable law, and (c) on Customer’s own data for its own internal purposes. Unless otherwise explicitly permitted in this Agreement, Customer shall not copy any portion of the SAAS Services.

(b) Customer may not post or upload any offensive, unlawful, sexual, obscene, illegal, or inappropriate content in connection with the SAAS Services. Service Provider reserves the right to remove content from the SAAS Services at any time, without notice, for any reason including, but not limited to, content that violates this section.

(c) All uses not permitted under this Section 4 are prohibited. By way of example and without limitation, Customer may not: (i) disassemble, decompile, reverse engineer, or modify the SAAS Services; (ii) examine the SAAS Services with debugging, memory inspection, or disk inspection tools; (iii) rent or sublicense the SAAS Services; (iv) permit use of the SAAS Services by a person who is not permitted to use the SAAS Services under this terms of this Agreement; (v) bypass or breach any security device or



protection used in the SAAS Services; (vi) transmit an electronic copy of the SAAS Services by any means; or (vii) use any SAAS Services offered by Service Provider that it has not subscribed to pursuant to an Order Form.

(d) This Agreement is a license to use, and not a contract of sale for, the SAAS Services. All right, title, and interest in and to the SAAS Services shall remain vested in Service Provider or its contractors or vendors, except that Customer shall have the license rights to the SAAS Services as granted by Service Provider to Customer under this Agreement. Service Provider shall retain complete ownership of all modifications and derivative works provided to Customer as part of any maintenance, support or otherwise. In no event shall any support, maintenance, SAAS Services or other intellectual property provided to Customer by Service Provider pursuant to this Agreement be deemed to be based on any “work made for hire” agreement between the parties.

(e) Customer agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the SAAS Services or any copies thereof in any form. Customer receives no rights to and will not sell, assign, lease, market, transfer, encumber or otherwise suffer to exist any lien or security interest on, nor allow any third person, firm, company, or other entity to copy, reproduce or disclose the SAAS Services, whether in whole, in part, or in any manner whatsoever.

(f) Customer shall be responsible for compliance with the terms of this Agreement by Customer’s employees, agents and clients who have access to the SAAS Services. Customer represents and warrants that as of the time of acceptance of the SAAS Services, Customer will have evaluated, tested, and examined the SAAS Services and will have determined independently that the SAAS Services are suitable for its requirements. Customer assumes all responsibility and risk of selection and suitability of the SAAS Services, and Service Provider shall have no liability therefor. Customer is solely responsible for all data provided by Customer or on Customer’s behalf to Service Provider or incorporated into or stored within the SAAS Services by Customer or on Customer’s behalf, and Service Provider shall have no liability therefor.

5. ***Entire Agreement.*** This Agreement and all Order Forms completed and approved pursuant to this Agreement, constitute the complete and exclusive terms of the agreement between the parties regarding the subject matter and supersedes all other prior and contemporaneous agreements or communications with respect to the subject matter hereof. If there is any conflict between the terms of an Order Form and the terms of this SAAS Subscription Agreement, then the terms of the Order Form shall control. The provisions of this



Agreement shall inure to the benefit of, and be binding on, the parties and their successors, assigns, employees, legal representatives, heirs, distributees, and transferees.

6. ***No Other Rights.*** Nothing in this Agreement grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to, the SAAS Services, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the SAAS Services are and will remain with Service Provider and/or its licensors. Service Provider shall have no maintenance or support obligations in connection with the SAAS Services unless specifically provided in the Order Form.

7. ***Representations and Warranties of Customer.*** Customer represents and warrants that (a) Customer has all necessary authorization to purchase and pay for the SAAS Services indicated in each Order Form; and (b) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the data it provides to Service Provider or uses in connection with the SAAS Services and that such data will not infringe, misappropriate or otherwise violate any intellectual property rights, or any privacy or other rights, of any third party or violate any applicable law or regulation.

8. ***Customer Obligations.*** Customer agrees to provide the necessary electric service, wiring, computer equipment and communication line access (in accordance with UL standards) for access to the SAAS Services. Customer agrees to provide, install and maintain, at Customer's expense, data communication lines therefor, all pursuant to minimum specifications prescribed by Service Provider from time to time. Customer shall be responsible for ongoing charges for Customer's own use of such data communication lines.

9. ***Additional Order Forms.*** In addition to the initial Order Form, the parties may enter into one or more additional Order Forms, each of which provides a general description of the SAAS Services to be provided to Customer. For any Order Form to be effective, it must be in writing and signed or otherwise authenticated by Customer and approved in writing by Service Provider. Electronic and fax documents are considered to be in writing for this purpose. Each such Order Form shall be automatically incorporated by reference into this Agreement.

10. ***Termination.*** In addition to any other termination right set forth herein, either party may terminate this Agreement (except for provisions which are intended to survive termination) upon written notice to the other party as follows:



(a) If the other party breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or

(b) If the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Notwithstanding the foregoing, Service Provider may, directly or indirectly, and by any lawful means, suspend, terminate or otherwise deny Customer's, any user's or any other person's access to or use of all or any part of the SAAS Services, without incurring any resulting obligation or liability, if: (a) Service Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Service Provider to do so; or (b) Service Provider believes, in its good faith and reasonable discretion, that: (i) Customer or any user has failed to comply with, any term of this Agreement, or accessed or used the SAAS Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement in this Agreement; (ii) Customer or any user is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated. This Section 10 does not limit any of Service Provider's other rights or remedies, whether at law, in equity or under this Agreement.

(c) Sections 11, 12, 16 and 17 shall survive termination of this agreement.

11. ***Limitations of Liability; Disclaimer of Warranties.*** Unless otherwise specifically stated in the Order Document with respect to the SAAS Services described in such Order Document, the following limitations of liability and disclaimers of warranties shall apply to the Agreement:

(a) IF SERVICE PROVIDER SHALL BE LIABLE TO THE CUSTOMER FOR ANY MATTER RELATING TO OR ARISING FROM THE AGREEMENT, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT, WARRANTY, EQUITY, NEGLIGENCE, INTENDED CONDUCT OR OTHERWISE, THE AGGREGATE AMOUNT OF DAMAGES RECOVERABLE AGAINST SERVICE PROVIDER WITH RESPECT TO ANY AND ALL BREACHES, PERFORMANCE, NONPERFORMANCE,



ACTS OR OMISSIONS HEREUNDER, DATA BREACHES, FAILURE TO COMPLY WITH PRIVACY AND DATA SECURITY LAWS, OR ANY REASON WHATSOEVER WILL NOT EXCEED THE LESSER OF \$50,000 or the AGGREGATE AMOUNT OF FEES ACTUALLY PAID FOR THE SERVICES OR WORK PRODUCT THAT LED TO THE CLAIM OR ACTION IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR ACTION.

(b) IN NO EVENT SHALL EITHER PARTY OR ITS PERSONNEL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND OPPORTUNITY COSTS) NOR SHALL THEY BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, INCLUDING WITHOUT LIMITATION LOSS OF DATA, LOSS OF PRIVACY OR LOSS OF SECURITY, WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE.

(c) EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THE AGREEMENT, SERVICE PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SERVICE PROVIDER CANNOT AND DOES NOT GUARANTY ANY RESULT OR THE EFFECTIVENESS OR PERFORMANCE OF THE SAAS SERVICES. ANY SAAS SERVICES ARE PROVIDED “AS IS,” AND ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED.

12. *Confidentiality.*

(a) For purposes of this Agreement, “*Confidential Information*” shall mean proprietary information or data, trade secrets (including, without limitation, various computer systems and programs, techniques, developments, improvements, inventions, and processes that are, or may be, produced in the course of the party’s operations, including any other information not generally known concerning the party’s or its operations, which, if used or disclosed, could adversely affect the party’s business or give competitors an advantage) and any other information designated as confidential by either party. With respect to the Service Provider, Confidential Information shall include, without limitation, the SAAS Services.



(b) Except for Personal Data, Confidential Information does not include information which (i) has become publicly known and made generally available through no act of the receiving party; (ii) is developed by the receiving party without use of the Confidential Information of the other party as evidenced by the receiving party's written records; or (iii) is disclosed to the receiving party by a third party who is not under an obligation to preserve its confidentiality. "Personal Data" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

(c) Each party to this Agreement must keep the other party's Confidential Information confidential and use it only as necessary to perform the receiving party's obligations under this Agreement. Neither party acquires any rights in the other party's Confidential Information except as specifically set forth in this Agreement. The receiving party must destroy or return to the disclosing party (at the disclosing party's direction) all tangible materials that are the disclosing party's Confidential Information upon the disclosing party's request or upon termination of this Agreement.

(d) If Confidential Information of a party is required to be disclosed pursuant to any applicable laws, the receiving party shall give the disclosing party reasonable prior written notice of any such anticipated disclosure and shall cooperate with the disclosing party's efforts to obtain a protective order.

13. ***Indemnification.***

(a) Service Provider shall indemnify, defend and hold Customer harmless from and against any loss, cost, damage, liability, or expense (including reasonable legal fees) suffered or incurred by Customer in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the SAAS Services. This indemnity obligation shall apply only to the extent that that Licensee promptly notifies Service Provider after Customer becomes aware of such claim, grants to Service Provider the authority to defend, compromise or settle the claim of infringement, and provides Service Provider any Customer information relevant to such claim. Service Provider shall have no liability for any claims of infringement that are based on or caused by (i) a modification to the SAAS Services, (ii) the use of a prior or modified release of the SAAS Services if the infringement claim could have been avoided by the use of a current unmodified release, (iii) a use of the SAAS Services in a manner not contemplated by this Agreement, (iv) Customer's use of the SAAS Services in combination with any hardware, software or information not



owned or developed by Service Provider, or (v) information, specifications, software or materials provided by the Customer or a third party.

(b) Service Provider further agrees that if Customer is prevented from using the SAAS Services due to an actual or claimed infringement under subsection (a) of this Section 13, then at Service Provider's option, Service Provider shall promptly either: (i) procure for Customer the right to continue to use the SAAS Services; (ii) replace or modify the SAAS Services so that the SAAS Services become non-infringing; or (iii) terminate the Agreement as it relates to the infringing SAAS Services and return the fees that Customer paid for the infringing SAAS Services less a reasonable amount for Customer's use of such SAAS Services up to the date Customer was prevented from using such SAAS Services.

(c) Subsections (a) and (b) of this Section 13 shall constitute Service Provider's entire obligation to Customer with respect to any claim of infringement.

(d) Customer shall be solely responsible for, and shall indemnify, defend, and hold Service Provider free and harmless from all damages, liabilities, charges, and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or relating to (i) Customer's use of the SAAS Services in a manner not permitted by this Agreement, not permitted by Service Provider, or not in conformance with this Agreement; (ii) any data, information or other material provided by Customer or on Customer's behalf to Service Provider or uploaded into the SAAS Services; (iii) the actions, omissions or claims by Customer's customers and clients; (iv) your failure to comply with applicable privacy and data security laws, (v) your instructions regarding Personal Data and (vi) an infringement of any right resulting in any way from the use of the SAAS Services with other software or materials not licensed to Customer by or not approved by Service Provider.

14. ***Changes to SAAS Services and Agreement.*** Service Provider reserves the right, in its sole discretion, to make any changes to the SAAS Services that it deems necessary, desirable or useful including, without limitation, changes intended to: (a) maintain or enhance (i) the quality or delivery of Service Provider's services to its customers, (ii) the competitive strength of or market for Service Provider's services or (iii) the SAAS Services' cost efficiency or performance; or (b) to comply with applicable law. In the event that such changes will remove features in a manner that substantially changes the functionality of the SAAS Services, Service Provider shall provide written notice to the Customer of such changes and such changes shall become effective thirty (30) days following such notice unless Customer notifies Service Provider of its desire to terminate the Agreement within such thirty (30) day period, in which case this Agreement shall terminate as of the end of



such thirty (30) day period. In addition, Service Provider reserves the right, in its sole discretion, to make any amendments or modifications to the Agreement that it deems necessary or desirable. All such amendments and modifications will become effective thirty (30) days after notification is provided to Customer unless Customer notifies Service Provider of its desire to terminate the Agreement within such thirty (30) day period, in which case this Agreement shall terminate as of the end of such thirty (30) day period.

15. **Aggregated Data.** Service Provider shall own all aggregated, statistical and usage data derived from the operation of the SAAS Services, including, without limitation, information regarding user interactions, the number of records in the SAAS Services, the number and types of transactions, configurations, and reports processed in the SAAS Services and the performance results for the SAAS Services (collectively “Aggregated Data”). If the Aggregated Data contains Personal Data subject to, the Personal Data will be Service Provider may utilize such Aggregated Data for purposes of operating Service Provider’s business unrelated to the provision of the SAAS Services hereunder including, without limitation, for the purposes of improving the services, analyzing usage data and marketing, and any other legitimate interests of Service Provider provided that Service Provider shall not reveal any confidential information of Customer or Personal Data subject to the the General Data Protection Regulation (“GDPR”) (Regulation (EU) 2016/679)

16. **Privacy.**

(a) When GDPR applies to your use of Service Provider Software or Services to process Customer Data (such as data from the European Union), you agree to notify us and execute a Bluetent Data Processing Addendum.

(b) Service Provider will handle any Personal Data relating to the personnel of Customer and third parties acting on behalf of Customer (the “Personnel”) that is provided to Service Provider or third parties acting on the behalf of Service Provider for the purposes of this Agreement in accordance with the handling practices described in the Bluetent Privacy Policy (available at <http://www.bluetent.com/bluetent-privacy-policy/>). Customer consents, and will ensure that the Personnel to whom such Personal Data relates, understand the collection, storage, use, disclosure and processing of Personal Data of the Personnel by Service Provider and third parties acting on Service Provider’s behalf in accordance with the Bluetent Privacy Policy for the purposes of this Agreement, including without limitation to provide the SAAS Service or to communicate with Customer and its Personnel. Customer represents and warrants that it is entitled in accordance with applicable laws to provide such Personal Data to Service Provider and third parties acting on Service Provider’s behalf for the purposes of this Agreement. Customer acknowledges, and will ensure that the Personnel to whom such Personal



Data relates are aware, that their Personal Data may be transferred to other countries outside the domicile of Customer or those Personnel, and that the protections afforded Personal Data under applicable laws and regulations may not be comparable or as protective as such data is protected in their domicile.

17. ***Miscellaneous Terms.***

(a) Customer may not assign or delegate any of its rights or obligations under this Agreement (including, without limitation, its license to the SAAS Services) without Service Provider's prior written consent. Service Provider may assign this Agreement, or any part thereof, upon written notice to Customer.

(b) This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado applicable to contracts to be performed solely within such state. The District Court of the City and County of Denver, State of Colorado, shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all controversies and claims arising out of or relating to this Agreement.

(c) Except as otherwise set forth herein, this Agreement may not be amended, modified or supplemented except by written instrument signed by the parties. No waiver of any default or breach of any agreement or provision herein contained shall be deemed a waiver of any other default or breach thereof or of any other agreement or provision herein contained. If any provision or portion of a provision of this Agreement is declared void and/or unenforceable, such provision or portion shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

(d) This Agreement covers only the SAAS Services. To the extent that the Customer desires for Service Provider to provide consulting services or any other services or goods, the terms of such agreement shall be separately negotiated.

(e) Except for payment of money, neither party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions of the other party or third parties, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any government agency or authority.

(f) All notices, demands and other communications to be sent by Customer to Service Provider under this Agreement shall be in writing and shall be sent via Service Provider's online support form located at support.bluetent.com. Such notice shall be deemed to have been validly made, given, served and received once



Customer receives an acknowledgement of its notice from Service Provider. All notices, demands and other communications to be sent by Service Provider to Customer under this Agreement shall be in writing and shall be deemed to have been validly made, given, served and received if given or served by delivery in person to the addressee, or if sent by facsimile or electronic transmission, or three (3) days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as set forth in the Order Form.

(g) During the Term of Service and for a period of one (1) year thereafter, Customer shall not, and shall not assist any other person or entity to, directly or indirectly, recruit or solicit for employment or engagement as an independent contractor any person or entity then or within the prior six (6) months employed or engaged by Service Provider.

(h) The parties acknowledge that this Agreement was prepared by counsel for Service Provider. The parties have had the opportunity to retain their own independent legal and financial counsel with respect to the negotiation of this Agreement. They have independently, separately, and freely negotiated each and every provision of this Agreement as if all parties drafted it, and therefore, waive any statutory or common-law presumption that would serve to have this document construed in favor of, or against, any party.

(i) In the case that the SAAS Services are involved in the processing of credit card payment data (PCI Data) subject to the Payment Card Industry Data Security Standards (PCI-DSS) the Service Provider acknowledges the responsibility to maintain a program of compliance with those standards in the handling of PCI Data. The Service Provider shall maintain a Secure Payment Services (SPS) environment for PCI compliant transactions. A current Attestation of Compliance for PCI-DSS for the SPS payments services shall be made available to Customer upon request. Customers with SAAS Services purchased before July of 2016 who are not already using SPS payments services may request an upgrade to SPS payment services free of charge.