



MASTER SUBSCRIPTION AGREEMENT

For Customers with a Master Subscription Agreement effective prior to August 1, 2024, see our Master Subscription Agreement Archive [here](#).

This Master Subscription Agreement (the “MSA”) is entered into by and between the Customer identified in the Sales Order that is purchasing the Bloomreach Services (“Customer”), and Bloomreach, Inc. (if Customer resides in the United States of America or Canada as represented in the applicable Sales Order) or Bloomreach B.V (if Customer resides outside of the United States of America or Canada as represented in the applicable Sales Order) (“Bloomreach”), and is effective as of the date Customer first accesses the Bloomreach Services or signs the applicable Sales Order, whichever comes first (the “Effective Date”). Bloomreach and Customer are collectively referred to as the “Parties” and individually as a “Party”. This MSA and applicable Sales Order are the complete agreement regarding transactions under this MSA (together, the “Agreement”).

1. DEFINITIONS.

In addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1 “Account” means the account created and/or authorized for Customer based on the Agreement in order to utilize the Bloomreach Services.
- 1.2 “Affiliate” means any entity controlling, controlled by, or under common control of a Party where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity.
- 1.3 “Applicable Law” means any law, rule, or regulation applicable to a Party.
- 1.4 “Bloomreach Services” means any products, services, professional services, or software provided by Bloomreach to Customer set forth in the applicable Sales Order.
- 1.5 “Customer Data” means the data of end users of the Customer’s services (including in particular Customer’s customers or website visitors), Customer’s employees, or Customer data provided to Bloomreach for the provision of Bloomreach Services.
- 1.6 “Data Protection Legislation” means (as applicable) (i) the California Consumer Privacy Act (“CCPA”) including as modified by the California Privacy Rights Act (“CPRA”), (ii) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (“GDPR”); (iii) European e-Privacy Directive (Directive 2002/58/EC), (iv) any national data protection laws made under or pursuant to (i), (ii) or (iii); and (v) in respect of the UK, the Data Protection Act 2018 and any applicable national legislation that replaces or converts in domestic law the GDPR or any other law relating to data and privacy as a consequence of the United Kingdom leaving the European Union (in each case as may be amended, superseded, or replaced).
- 1.7 “Documentation” means any technical specification documentation, technical product descriptions, user guides and technical integration guides relating to the Bloomreach Services provided by Bloomreach to a Customer and/or published at <https://documentation.bloomreach.com/>.
- 1.8 “Sales Order” means a Bloomreach order form that specifies the fees, term, and other details of the Bloomreach Services to be provided by Bloomreach to Customer signed by authorized representatives of each Party.
- 1.9 “SLA” means a service level agreement applicable to specific products or services provided by Bloomreach to Customer under the Bloomreach Services if specifically agreed in the applicable Sales Order.
- 1.10 “Term” means both the initial term plus any renewal term set forth on the applicable Sales Order. The Term may otherwise be identified as the Subscription Term in accompanying documentation.

2. LICENSE TERMS

- 2.1 So long as Customer pays all Fees associated with the applicable Sales Order and complies with the terms set forth herein and therein, as of the date Customer receives access to the Bloomreach Services, Bloomreach hereby grants Customer a worldwide, non-exclusive, non-transferable, revocable right to use and access the Bloomreach Services described in the applicable Sales Order during the Term. Customers using Experience Manager – Self Hosted shall receive a worldwide, non-exclusive, non-transferable, revocable license, to use and reproduce the Bloomreach

Services in object form.

3. INTELLECTUAL PROPERTY

- 3.1 Bloomreach shall retain all rights, including but not limited to all patent rights, trademark rights, copyright, trade secrets, and any other intellectual property rights, in and to the Bloomreach Services, Documentation, and any underlying structure, schema, functions, methods of operation, and ideas relating to the Bloomreach Services that are being developed, and any algorithms, derivative works, or any modifications, corrections, improvements, or extensions to the Bloomreach Services. Customer will not obtain any further rights other than are explicitly granted to Customer in this Agreement.
- 3.2 Reports. If the Customer provides Bloomreach with any reports of defects and/or suggests modifications ("Reports"), Bloomreach shall have the right to use such Reports, including incorporating such Reports into its Bloomreach Services or other software products, without any obligation to the Customer.
- 3.3 Generated Data. The intellectual property rights of the data generated by Customer's use of the Bloomreach Services, will remain the exclusive, sole, and absolute property of Customer.
- 3.4 Enhancement of Bloomreach Services. Bloomreach has the right to analyze the Customer's use of the Bloomreach Services to improve, enhance, and optimize the performance of the Bloomreach Services. For this purpose, Bloomreach may (a) collect and analyze the data derived from the Customer Data and process such data in an aggregated and anonymized form during or after the Term, and (b) make such aggregated and anonymized data available via industry trend reports.

4. RESTRICTIONS AND RESPONSIBILITIES

- 4.1 Responsibilities. Customer agrees that it will: (a) cooperate with Bloomreach as reasonably required to set up and integrate the Bloomreach Services, including meeting any requirements documents, guidelines, or other instructions provided or made available by Bloomreach from time to time; (b) comply with the Bloomreach Acceptable Use Policy available at <https://www.bloomreach.com/en/about/acceptable-use-policy> (the "AUP"); and (c) comply with any product restrictions and limitations set forth in the Documentation.
- 4.2 Project Responsibilities. Customer acknowledges that its failure or delay in satisfying any Customer responsibility set forth herein or in any applicable Sales Order may adversely affect Bloomreach's ability to satisfy its performance obligations and complete a project by the estimated end date. In any such case, Bloomreach will be excused from any resulting failure or delay of performance.
- 4.3 Restrictions. The Customer shall not (and shall not authorize any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create any derivative works based on the Bloomreach Services, except to the extent that enforcement of the foregoing restrictions is prohibited by Applicable Law; (b) circumvent any user limits, applicable usage allowances, or timing, use, or functionality restrictions set forth in the Documentation or applicable Sales Order or built into the Bloomreach Services; (c) remove any proprietary notices, labels, or marks from the Bloomreach Services; (d) frame or mirror any content forming part of the Bloomreach Services; (e) access the Bloomreach Services in order to (i) build a competitive product or service, or (ii) copy any ideas, modules, functions, or graphics; (f) register, or make it possible to register or support the third party registration of trademarks, business names, or other designations of Bloomreach; or (g) use Bloomreach's intellectual property rights for its benefit, e.g., by combination of Bloomreach logos and/or trademarks with its own business name and/or company name or its own products or services; (h) use the Bloomreach Services in a way that is prohibited by the AUP.
- 4.4 Unauthorized Use. The Bloomreach Services detailed herein are not intended, nor should they be used to capture any Protected Health Information as defined within the Health Insurance Portability and Accountability Act of 1996 (as amended) or special categories of Personal Data as defined within the GDPR. Customer understands and acknowledges that any such use of the Bloomreach Services for this purpose violates the terms of the Agreement and Bloomreach shall have no liability for such unauthorized use.
- 4.5 Affiliate Sales Orders. Affiliates may purchase the Bloomreach Services from Bloomreach by entering into a separate Sales Order with Bloomreach. The Affiliate that executes a Sales Order shall be the "Customer" for all purposes of such Affiliate Sales Order; and such Affiliate Sales Order shall be considered a two-party agreement between Bloomreach and such Affiliate and incorporate by reference all the provisions of this Agreement as though such provisions were set forth therein in their entirety. Notwithstanding the foregoing, if such Affiliate is not able to



comply with its obligations under the Affiliate Sales Order, Customer shall remain ultimately responsible for such Affiliate's compliance with the Affiliate Sales Order.

- 4.6 Permitted Users. Customer may permit its contractors to access the Bloomreach Services, provided Customer remains responsible for compliance by each such contractor with all of the terms and conditions of this Agreement. Any such use of the Bloomreach Services by such contractor shall be for the sole benefit of Customer.

5. CONFIDENTIALITY.

- 5.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business and services (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) to use the same degree of care to protect the Proprietary Information as it uses to protect its own Proprietary Information of like nature, but in no circumstances less than reasonable care, and (ii) not to use or divulge to any third person any such Proprietary Information except as expressly permitted herein or to its officers, employees, consultants, contractors, Affiliates, or legal advisors who need access to such Proprietary Information in order to effect the intent of the Agreement and who have entered into a confidentiality agreement at least as restrictive as the requirements in this clause. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three years following the disclosure thereof (except Proprietary Information that is identified as trade secrets, in which case the foregoing obligations are ongoing) or any information that the Receiving Party can document (a) is or becomes generally available to the public through no breach of this Agreement, (b) was in its possession or known by it prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without the use of any Proprietary Information of the Disclosing Party or (e) is required by law to be disclosed, provided that Receiving Party first provides the Disclosing Party with reasonable prior notice and obtains, or provides the Disclosing Party with an opportunity to obtain, a protective order or confidential treatment of the Proprietary Information. Notwithstanding anything to the contrary in this Agreement, the Receiving Party may disclose the Proprietary Information of the Disclosing Party to the extent required by an information disclosure request made under Applicable Law, provided that the Receiving Party promptly notifies the Disclosing Party of the information disclosure request before disclosing the Proprietary Information and comply with the Disclosing Party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, the Receiving Party is not obliged to notify the Disclosing Party of the information disclosure request if it could result in a violation of Applicable Law by the Receiving Party.

6. PAYMENT OF FEES.

- 6.1 Customer shall pay Bloomreach the fees in accordance with the applicable Sales Order (the "Fees"). Customer will pay all Fees in the currency stated in the invoice and agreed in the applicable Sales Order. Invoices will be issued electronically. All Fees shall be invoiced as follows and except as expressly set forth in Section 10.1 (Indemnity) of this Agreement or SLA, shall be non-refundable. Full payment for all invoices is due and payable within 30 days from the date of the invoice unless otherwise designated in an applicable Sales Order, and Bloomreach may suspend or terminate the right to use or access the Bloomreach Services if any payment is overdue. Bloomreach will not exercise any rights to suspend or terminate the use or access to the Bloomreach Services, accelerate payments, impose late charges or change payment terms hereunder with respect to an overdue amount for so long as Customer is disputing the overdue amount in good faith. If Customer believes that Bloomreach has billed Customer incorrectly, Customer must contact Bloomreach no later than 30 days after the date of the invoice in which the error or problem first appeared in order to request an adjustment or credit. Inquiries should be directed to Bloomreach's Billing department at billing@bloomreach.com. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Bloomreach's Fees are exclusive of all sales, use, value-added, withholding and other taxes or duties, and Customer will promptly pay or reimburse Bloomreach for all taxes arising out of this Agreement. Customer hereby confirms that Bloomreach can rely on the Customer corporate address in the applicable Sales Order as being the place of use for sales tax purposes, unless Customer provides, prior to invoicing by Bloomreach, a list of other place(s) as being the place(s) of use. Payments to Bloomreach shall be made without deduction for any taxes. In the event withholding taxes are due and payable under Applicable Law, Customer shall be obligated to proportionally increase the Fees payable to Bloomreach for the Bloomreach Services in the applicable Sales Order so that the increased Fees are equivalent to the withholding taxes. If Customer is legally entitled to an exemption from the payment of any taxes, Customer will promptly provide Bloomreach with legally sufficient tax exemption certificates for each taxing jurisdiction for which it claims exemption. Customer shall provide Bloomreach with up-

to-date registration certificates for VAT/GST upon request without delay.

- 6.2 Reimbursement. Unless the Parties agree otherwise, Bloomreach Services are provided online. If the Parties agree that services will be provided in person at a certain location, Customer agrees to reimburse Bloomreach for all reasonable costs associated therewith, mainly but not exclusively accommodation and travel expenses, if applicable.

7. TERM AND TERMINATION

- 7.1 Term. This Agreement shall commence on the Effective Date and shall remain in effect unless terminated in accordance with Section 7.2.
- 7.2 Termination For Cause. In addition to any other remedies it may have, either Party may terminate this Agreement and any underlying Sales Order(s): upon 30 days' written notice (or 10 days in the case of nonpayment) if (a) the other Party materially breaches any of the terms or conditions of this Agreement and such breach is not cured within the relevant notice period; (b) if either Party becomes insolvent on the basis of a respective court order immediately upon notice. If the Customer breaches the AUP, Bloomreach may terminate the Agreement immediately upon notice; Bloomreach shall notify the Customer of breach of the AUP prior to termination provided such notification is reasonable considering the nature of the Customer's breach and potential damages that may be caused by such breach. For the avoidance of doubt, neither Party is entitled to terminate this Agreement without cause.
- 7.3 Effect of Termination. Upon termination Customer will cease using the Bloomreach Services and if applicable shall promptly return all copies of the Documentation to Bloomreach or otherwise destroy those copies and provide written confirmation that it has done so if requested. If Customer terminates a Sales Order or this Agreement due to Bloomreach's uncured breach, Bloomreach will refund any prepaid fees covering the remainder of the Term of the affected Sales Order(s) after the effective date of termination. If the Agreement is terminated by Bloomreach due to Customer's uncured breach, Customer agrees that it shall remain responsible for all outstanding fees payable to Bloomreach for the Term and Bloomreach may declare all such fees immediately due and payable. Customer acknowledges that such amounts are liquidated damages reflecting a reasonable measure of actual damages and not a penalty.

8. WARRANTY AND DISCLAIMER.

- 8.1 Customer represents, covenants, and warrants that Customer will use the Bloomreach Services in compliance with Applicable Law (including without limitation laws and regulations related to privacy, intellectual property, consumer protection, obscenity, and defamation). Bloomreach warrants that it will use commercially reasonable care and skill when performing services provided in a Sales Order Except as provided herein, BLOOMREACH MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARDS TO THE BLOOMREACH SERVICES, DOCUMENTATION, CONSULTATION, OR ANY BLOOMREACH CONTENT. Bloomreach does not warrant that the Bloomreach Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Bloomreach Services. EXCEPT FOR THE FOREGOING AND UNLESS OTHERWISE SET FORTH IN THE SLA, THE BLOOMREACH SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND BLOOMREACH DISCLAIMS ALL STATUTORY OR OTHERWISE CONDITIONS, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BLOOMREACH IS NOT ENGAGED IN THE PRACTICE OF LAW. ANY STATEMENTS OR ASSISTANCE BLOOMREACH PROVIDES SHOULD BE INTERPRETED AS OPINIONS OR ADVICE CONCERNING BUSINESS ISSUES TO BE CONSIDERED IN CONNECTION WITH THE SERVICES. CUSTOMER REPRESENTS AND WARRANTS IT IS NOT RELYING UPON BLOOMREACH TO PROVIDE LEGAL SERVICES. CUSTOMER ACKNOWLEDGES THAT NEITHER BLOOMREACH NOR ITS THIRD PARTY PROVIDERS CONTROLS THE TRANSFER OF DATA OVER THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND INTERNET SEARCH ENGINES. BLOOMREACH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. Bloomreach makes no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of the products and services provided under the Bloomreach Services (unless otherwise set forth in the SLA), Documentation, or any Bloomreach content.
- 8.2 Each Party represents and warrants to the other Party that: (a) such Party is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation; and the execution, delivery and performance of the

Agreement constitutes the legal, valid and binding obligation of such Party; and (b) such Party has all requisite corporate power and financial capacity, and authority to execute, deliver, and perform its obligations under the Agreement.

9. LIMITATION OF LIABILITY.

- 9.1 Neither Party shall be liable hereunder for any loss of profits, business, revenues, savings, reputation, production, goodwill, use or data, or for interruption of business, or any other indirect, incidental, special, exemplary, consequential or punitive damages even if advised of the possibility of such damages, regardless of the form of action. Except for Bloomreach's indemnification obligations in Section 10 (Indemnity) herein, Bloomreach's aggregate, cumulative monetary liability for any damages arising from or related to this Agreement, whether in contract or in tort or under any other legal theory (including strict liability and negligence), shall not exceed the Fees paid by Customer to Bloomreach for the Bloomreach Services under this Agreement in the 12 months prior to the act that gave rise to the liability. The Parties agree that this clause represents a reasonable allocation of risks. THE FOREGOING EXCLUSIONS AND LIMITATIONS WILL BE ENFORCED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

10. INDEMNITY.

- 10.1 Bloomreach shall indemnify and defend Customer against any unrelated third-party action, claim, or suit ("Claim") to the extent such Claim alleges that the Bloomreach Services infringe any United States, United Kingdom or European Union patent right or trademark of a third party. The foregoing obligation shall not apply with respect to any Claim arising from or relating to (i) Customer's use of the Bloomreach Services other than in accordance with and as contemplated by this Agreement or other breach of this Agreement by Customer; (ii) the combination of the Bloomreach Services with any other products, services, materials or technology, if the Bloomreach Services would not be infringing without such combination; (iii) any open source software; or (iv) modifications to the Bloomreach Services not specifically authorized in writing by Bloomreach. If the Bloomreach Services become the subject of an intellectual property infringement Claim, Bloomreach may, at its sole option, (1) procure for Customer a license to continue using the Bloomreach Services in accordance with this Agreement; (2) replace or modify the allegedly infringing portion of the Bloomreach Services to avoid the infringement, or (3) terminate this Agreement and refund any prepaid unused Fees as of the date of termination. This Section 10.1 sets forth Customer's sole remedy in the event of any third-party infringement Claim regarding the Bloomreach Services.
- 10.2 Customer shall indemnify and defend Bloomreach against any Claim to the extent such claim is arises from: (i) Customer Data; (ii) Customer content on the site; or (ii) from Customer's misuse of the Bloomreach Services or other breach of this Agreement.
- 10.3 Each party's obligations under this Section 10 (Indemnity) shall be conditioned on the party seeking indemnification providing the indemnifying party with (i) prompt notice of any Claim, (ii) sole control of the defense and settlement of any such Claim and (iii) reasonable cooperation in such defense and settlement. The indemnifying party will not enter into any settlement or compromise of any such claim without the indemnified party's prior written consent if the settlement would require admission of fault or payment by the indemnified party. Subject to the requirements set forth herein, the indemnifying party shall pay reasonable costs incurred by the indemnified party directly related to the Claim.

11. PUBLICITY AND MARKETING.

- 11.1 Bloomreach may identify Customer as a customer of the Bloomreach Services on Bloomreach's customer lists, on its websites and in its advertising and marketing materials, and Customer hereby grants to Bloomreach the right to use Customer's name and trademarks in connection therewith.
- 11.2 With Customer's prior consent, Bloomreach may develop and publish case studies based upon Customer's use of the Bloomreach Services, which include but are not limited to video testimonials, press releases, and webinars.

12. DATA PROTECTION.

- 12.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This Section 12 is in addition to, and does not relieve, remove, or replace a party's obligations or rights under the Data Protection Legislation. The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Bloomreach for the duration and purposes of this Agreement.

- 12.2 The Parties agree Bloomreach's Data Processing Addendum (DPA) available at <https://www.bloomreach.com/en/legal/dpa-all> shall apply to the processing of personal data.

13. MISCELLANEOUS.

- 13.1 Complete Understanding. Each Party agrees that this Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently), that is not set out in this Agreement. All waivers and modifications must be in a writing signed by the Parties, except as otherwise provided herein. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary to be enforceable. This Agreement will otherwise remain in full force and effect.
- 13.2 Assignment. Neither Party may transfer and assign any of its rights and obligations under this Agreement without the consent of the other Party, which consent shall not be unreasonably withheld, except that no consent shall be required upon written notice for an assignment of (i) this Agreement by either Party pursuant to a change of control or a merger or sale of substantially all of a Party's assets or outstanding stock, (ii) this Agreement by Bloomreach to an entity controlled by or under common control with Bloomreach in each instance provided that the assignee agrees in writing to assume all of the obligations of the assignor hereunder, or (iii) Bloomreach's monetary receivables arising out of the Agreement to any third parties.
- 13.3 Relationship of the Parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither Party has any authority of any kind to bind the other in any respect whatsoever.
- 13.4 Notices. Any legal notice or other communication required or permitted to be made or given by either Party pursuant to this Agreement will be in writing and will be deemed to have been duly given: (i) five (5) business days after the date of mailing if sent by registered or certified mail, postage prepaid, with return receipt requested; (ii) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; (iii) when transmitted if sent by email; or (iv) when delivered if delivered personally or sent by express courier service. All notices will be sent to the other Party at its address as set forth below or at such other address as the Party may specify in a notice given in accordance with this section.

If by mail, express courier, or personally delivered to Bloomreach at 700 E. El Camino Real, Suite 130, Mountain View, CA 94040, if contracting with Bloomreach Inc., or Keizersgracht 125, 1015 CJ Amsterdam The Netherlands, if contracting with Bloomreach B.V, and by email to Bloomreach: legal@bloomreach.com. If by mail, express courier, personally delivered, or email to Customer: to the address set forth in the applicable Sales Order or otherwise provided by Customer.

- 13.5 Governing Law. If Customer resides in the United States of America or Canada as represented in the applicable Sales Order, this Agreement is governed by the law of California, U.S.A without regard to its conflict of laws' provisions and any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in Santa Clara County. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

If Customer resides in the United Kingdom as represented in the applicable Sales Order, this Agreement is governed by the laws of England and any legal action or proceeding relating to this Agreement shall be brought exclusively in London, England. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

If Customer resides outside of the United States of America or Canada and not in the United Kingdom, as represented in the applicable Sales Order, this Agreement is governed by the laws of The Netherlands and any legal action or proceeding relating to this Agreement shall be brought exclusively in Amsterdam, The Netherlands. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

- 13.6 Conflicting terms. If there is a conflict between the documents that make up the Agreement, the documents will control in the following order: Sales Order, Data Processing Addendum, Master Subscription Agreement.
- 13.7 Export. Bloomreach Services are subject to export laws and regulations of the United States and other jurisdictions. The Parties represent that they are not named on any U.S. government denied-party list (the most up-to-date lists can be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>). Customer will not permit any access to or use Bloomreach Services in a U.S. embargoed country or region or in violation of any U.S. export law or regulation.
- 13.8 Set-off. Each of the Parties hereby acknowledges that it shall have no right under this Agreement to offset any amounts owed (or to become due and owing) to the other Party, whether under this Agreement or Sales Order against any other amount owed (or to become due and owing) to it by the other Party.
- 13.9 Force majeure. Except for payment of fees, neither party shall be liable for failure to perform, or the delay in performance of, any of its obligations under the Agreement if and to the extent that such failure or delay is caused by events beyond its reasonable control, including, but not limited to, acts of the public enemy or a governmental body in its sovereign or contractual capacity, war, fire, floods, natural disaster, strikes, unusually severe weather, outside electrical failure, the limitations or failures of third-party internet service providers and/or telecommunication providers, the performance or failures of internet service providers, or acts of terrorism. If so affected, the affected party shall use commercially reasonable efforts to avoid or remove such causes of non-performance or delay and shall continue performance hereunder with reasonable dispatch whenever such causes are removed or otherwise resolved.