



BLUESHIFT PLATFORM Terms and Conditions

Effective Date: July 21, 2021

These Terms and Conditions, together with all applicable Order Confirmations between the parties, are an agreement that is made and entered into as of the earliest date of Blueshift's counter-signature on a Blueshift Order Form (such counter-signature creates the "Order Confirmation" and the date of counter-signature is the "Effective Date") by and between Blueshift Labs, Inc. ("Blueshift"), and the Customer identified in the applicable Order Confirmation(s) ("Customer"). The parties hereby agree as follows:

1. SERVICES

1.1 Subject to Customer's compliance with these terms and conditions (including, without limitation, timely payment of all fees specified in each Order Confirmation ("Fees")), Blueshift will provide to Customer, and hereby grants to Customer a non-transferable, non-sublicensable, non-exclusive, limited license and right to access and use the Services identified in the Order Confirmation for the applicable term and as set forth in the applicable Order Confirmation (the "Services"), in accordance with Blueshift's instructions and





Blueshift 's software platform in any way. Nothing herein grants Customer any rights to rent, resell, or remarket the Services, or to provide access to the Services to, or use the Services to perform any services for, any third party.

1.2 Customer shall ensure that its Users shall comply with Customer's obligations under this Agreement. A breach by any User of Customer's obligations under this Agreement shall constitute a breach by Customer. At Blueshift 's request, Customer will promptly terminate a User's access to the Service if Blueshift reasonably believes that such individual is in breach or is otherwise misusing or abusing the Services. Blueshift reserves the right to immediately suspend or terminate any part or portion of the Services if it reasonably believes that Customer or any User is misusing or abusing such Services or is otherwise in breach of this Agreement. Nothing in this Section 1.2 imposes on Blueshift any obligation to supervise or monitor use of the Services.

1.3 Customer will not use the Services in any way that (i) violates any law or regulation, (ii) infringes or violates the rights of others, including third party Intellectual Property Rights, privacy, and publicity rights, or (iii) interferes with other users of Blueshift 's services.

1.4 Customer shall not, and shall not permit any person or entity to: (i) use the Services on a service bureau, time sharing, or any similar basis, or for the benefit of any other person or entity; (ii) alter, enhance, or make derivative works of the Services; (iii) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Services or any software component of





or administrative organizations; (v) introduce in or to the Services any virus, or implement a denial of service attack, or introduce or implement any other code or routine which results in disruption or damage to the Services, or alters, damages, or deletes any data or retrieves or records information about the Services or its uses; or (vi) act in a fraudulent, tortious, malicious, or negligent manner when using the Services. Customer will promptly notify Blueshift of any third-party complaints regarding Customer's use of the Services.

1.5 Customer shall, at its own cost and expense, provide all equipment, operating systems, internet connections, networking, and any other software or systems needed to access and use the Services in accordance with Blueshift's requirements.

1.6 Subject to Customer's payment of all applicable fees, if Customer subscribes to a specific Blueshift Platform, Blueshift will provide Customer with instructions, analysis, and other reasonable assistance in connection with Customer's implementation and use of that Platform via telephone and email support from 9am to 6pm PST seven days a week, at no additional charge during the Term.

1.7 Customer acknowledges that certain Services require Customer to provide data and information to Blueshift or the Service in accordance with Blueshift's documentation and instructions, and Blueshift's obligations hereunder are contingent on Customer's lawful provision of such data. Customer covenants that it will only supply Blueshift or the Services with data that Customer has the right to supply for the purposes set forth in this Agreement. Such data shall be considered Customer's Confidential Information hereunder, and Blueshift will use such data solely for the benefit of and to



business, software, and Services.

2. PAYMENT

2.1 Customer shall pay Blueshift all Fees as specified in the applicable Order Confirmation(s).

2.2 Services will be suspended if a payment is not paid when due.

2.3 Customer will pay amounts equal to any Federal, state or local sales, use, excise, privilege or other taxes or assessments, however designated or levied, relating to any amounts payable by Customer to Blueshift hereunder or any Services provided by Blueshift to Customer pursuant hereto, excluding taxes based on Blueshift's net income, such that Blueshift receives and retains the full amount of all Fees set forth in each Order Confirmation.

3. OWNERSHIP

3.1 "Intellectual Property Rights" means any patent, patent application, copyright, moral right, trade name, trademark, service mark, trade secret, and any applications or right to apply for registration therefore, computer software programs or applications, tangible or intangible proprietary information, or any other intellectual property right, in any media, whether registered or unregistered, and whether first made or created before or after the Effective Date.

3.2 The Services and the associated software platform, including all Intellectual Property Rights thereto and the structure, organization, and code used in conjunction with the Services and the Blueshift Platform are proprietary to Blueshift, and (as between the parties)



enhancements, derivatives, and other software and materials relating to the Services or the platform, and all copies thereof. Customer shall not copy, sell, modify, enhance, transfer, publish, disclose, display, or otherwise make available the Services or the platform to any third party. The Services, the associated software and the platform are Blueshift's Confidential Information. Customer shall not remove any proprietary, copyright, trademark, or service mark legend from any Services, software, or other materials provided by Blueshift. As between Blueshift and Customer, except for the implied licenses necessary to enable Blueshift to perform its obligations under this Agreement, Customer retains exclusive ownership of Intellectual Property Rights relating to Customer materials, data, information and Confidential Information.

3.3 Customer acknowledges that "Blueshift" and any other trademarks, trade names and service marks adopted by Blueshift to identify the Services, its software platform, and other Blueshift products or services are solely owned by Blueshift, and all goodwill associated therewith shall inure solely to the benefit of Blueshift. Customer shall take no action inconsistent with this Section 3.3 in any territory or jurisdiction.

3.4 Customer shall immediately inform Blueshift of (a) any claim or proceeding involving the Services that comes to its attention; and (b) any facts it becomes aware of indicating that any person is infringing any Intellectual Property Rights of Blueshift or is engaging in unauthorized use, distribution or exploitation of any Services.

4. CONFIDENTIALITY



4.1 "Confidential Information" shall mean any and all information or



considered to be confidential or proprietary due to its nature or the context of its disclosure, and is hereafter disclosed or made available by either party (the “disclosing party”) to the other (the “receiving party”) in connection with the efforts contemplated hereunder, including (i) the trade secrets of either party, and (ii) the Service and any portion thereof.

4.2 Both parties acknowledge that either may receive Confidential Information from the other during the Term of this Agreement. The receiving party shall disclose the other party’s Confidential Information only to persons within the receiving party having the need to know the information for the purpose of this Agreement and shall use the other party’s Confidential Information solely in the exercise of its rights or responsibilities under this Agreement. The receiving party shall treat Confidential Information as it does its own valuable and sensitive information of a similar nature, and, in any event, with not less than reasonable care. Upon the disclosing party’s written request, the receiving party shall return or certify the destruction of all Confidential Information.

4.3 The obligations of either party under this Section 4 will not apply to information that the receiving party can demonstrate (i) was in its possession at the time of disclosure and without restriction as to confidentiality, (ii) at the time of disclosure was generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving party, or (iii) has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the receiving party. Further, the receiving party may disclose Confidential Information to the extent such disclosure is



to the disclosing party and reasonably cooperate with the disclosing party, at the disclosing party's cost and expense, in any effort made by the disclosing party to seek a protective order or other appropriate protection of its Confidential Information.

4.4 Failure on the part of the receiving party to abide by this Section 4 shall cause the disclosing party irreparable harm for which damages, although available, may not be an adequate remedy at law. Accordingly, the disclosing party has the right to seek an injunction to prevent any violations or attempted violations of this Section 4 and seek to recover court costs and reasonable attorney fees incurred by the disclosing party in the enforcement of this Section.

4.5 Blueshift may disclose that Customer is a Customer of the Services and may use Customer's name and logo as part of Blueshift's customer lists and include Customer in any sales and marketing materials, case studies, references, and other promotional content and materials regarding the Services. The parties will work together to craft a mutually agreeable customer testimonial regarding the Services for public release.

5. WARRANTY DISCLAIMER

5.1 OTHER THAN AS SET FORTH HEREIN, BLUESHIFT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND GUARANTIES, WHETHER ORAL OR WRITTEN, IMPLIED OR STATUTORY, WITH REGARD TO THE SERVICES OR ANY COMPONENTS THEREOF, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A





OR REPRESENT THAT THE SERVICE OR ACCESS TO THE SERVICE WILL BE ERROR-FREE, UNINTERRUPTED OR SECURE. OPERATION OF THE SERVICES MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF BLUESHIFT 'S CONTROL.

6. LIMITATION OF LIABILITY

6.1 OTHER THAN LIABILITIES ARISING OUT OF SECTION 8 (INDEMNIFICATION), UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT (INCLUDING LOSS OF PROFITS OR COST OF PROCUREMENT OF SUBSTITUTES), INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, OR OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. BLUESHIFT WILL NOT BE LIABLE FOR ANY PROPERTY DAMAGE CAUSED BY THE USE OF THE SERVICES, REPORTS PRODUCED THROUGH USE OF THE SERVICES, OR BY ANY ERRORS, DELAYS, OR FAILURES OF THE SERVICE OR INTERRUPTIONS IN THE TRANSMISSION OF THE SERVICES.

6.2 BLUE SHIFT'S AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER HEREUNDER DURING THE IMMEDIATELY PRECEDING SIX (6) MONTHS FROM WHEN SUCH LIABILITY FIRST AROSE.

6.3 The limitations specified in Section 6 will survive and apply even



warranty and the limitations of liability set forth in this Agreement, which form an essential basis of the bargain between the parties.

7. TERM AND TERMINATION

7.1 This Agreement shall have an initial term (“Initial Term”) that commences on the Effective Date and expires on the expiration of the last subscription or license term set forth in a valid Order Confirmation. Each Subscription Period shall automatically renew for subsequent Subscription Periods of the same length unless either party provides written notice of its intention not to renew on or before sixty (60) days before the end of the then current Subscription Period. Each party may terminate this Agreement upon thirty (30) days prior written notice to the other party if the other party materially breaches this Agreement and fails to correct the breach within such thirty (30) day period, provided, however, that Blueshift may terminate this Agreement upon fifteen (15) days prior written notice in the event Customer fails to pay Fees when due and fails to correct such non-payment within such fifteen (15) day period. Each party may terminate this Agreement upon written notice if the other party ceases to conduct business (except for a temporary cessation caused by Force Majeure), becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within sixty (60) days, or makes an assignment for the benefit of its creditors. Notwithstanding anything to the contrary, in the event of termination under this Section 7.1, all amounts due under this Agreement shall be due immediately and paid within ten (10) days of such termination.



7.2 Neither party shall be liable to the other for failure or delay in the



non-performing party (“Force Majeure”), provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible.

7.3 Termination will be in addition to and not in lieu of any equitable remedies available to Blueshift. Neither party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other arising from or incident to any suspension or termination of this Agreement by such party or any expiration hereof which complies with the terms of the Agreement, whether or not such party is aware of any such damage, loss or expenses.

8. INDEMNIFICATION

8.1 Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other party and its subsidiaries and other affiliates, and its and their respective directors, officers, employees, contractors, equity holders, agents, representatives, successors and assigns to the fullest extent of applicable law, from and against any and all third party claims, demands, suits, actions, causes of action, damages, losses, liabilities, obligations, interest, penalties, costs (including court costs and costs of settlement) and expenses (including reasonable outside attorneys’ fees and expenses) (“Losses”) incurred by the other party arising or resulting from or otherwise in connection with a breach by the Indemnifying Party of this Agreement. The foregoing indemnification obligations are expressly conditioned upon the non- Indemnifying Party (i) providing the Indemnifying Party prompt written notice upon learning of any such Losses; (ii) providing the Indemnifying Party sole control of the defense and settlement of any such Losses; and (iii) providing the



9. GENERAL

9.1 This Agreement shall be governed by the laws of the State of California without regard to its principles or provisions regarding conflicts of law. Each party expressly (i) consents to the jurisdiction of the state and federal courts of San Francisco, California to resolve any dispute arising from this Agreement, and (ii) waives any defense of inconvenient or improper forum. This Agreement relates solely to the performance of services (not the sale of goods) and, accordingly, will not be governed by the Uniform Commercial Code of any state having jurisdiction and shall not be governed by the United Nations Convention on the International Sale of Goods.

9.2 Customer may not assign or transfer this Agreement in whole or in part to any third party, provided, however, that either party may assign this Agreement in its entirety to an Affiliate or acquirer of such party's business provided that such party's Affiliate or acquirer confirms its agreement to the terms and conditions of this Agreement and all applicable Order Confirmations. This Agreement shall bind and inure to the benefit of the parties to this Agreement and their respective successors, permitted transferees, and permitted assigns. No provision of this Agreement shall be deemed to confer upon any third party any remedy, claim, liability, reimbursement, cause of action, or other right whatsoever. The term "Affiliate" shall mean, as to a party hereto, any person or entity who directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party. Blueshift may fulfill any of its obligations under this Agreement through third-party service providers and suppliers, provided that any such party



jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect. Sections 1.5, 2 (with respect to Fees accrued prior to termination), 3, 4, 5, 6, 7, and 8 will survive termination or expiration of the Agreement for any reason.

9.4 Customer may not remove or export from the United States or allow the export or re-export of the Services, or any direct product thereof, including technical data, or allow access or use by persons restricted by the U.S. Government, in violation of any restrictions, laws, or regulations of the United States or any other applicable country.

9.5 Blueshift and Customer are not partners or in a joint venture; neither party has the right to bind the other party and neither party is the agent, representative or employee of the other party. Nothing in this Agreement will be construed to create any relationship between them other than an independent contractor relationship.

9.6 All notices and other legal communications permitted or required to be given under this Agreement shall be deemed to have been duly given if such notice of communication is in writing and sent by personal delivery or by reputable overnight courier (such as Federal Express), postage or costs of delivery prepaid ("Notice Delivery"), to the parties at addresses specified in the latest Order Confirmation between the parties or to such other address as either party gives the other party via Notice Delivery of changed address.

9.7 This Agreement is the complete statement of the entire agreement between the parties, and this Agreement supersedes all prior proposals, understandings and arrangements, oral or written, between the parties relating to the subject matter of this Agreement.



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[SPAM POLICY](#) | [MODERN SLAVERY](#)

[STATEMENT](#)

