

BLUECONIC (U.S.) TERMS AND CONDITIONS

Latest Update: June 2015

[<https://www.blueconic.com/terms>]

These are the BlueConic Terms and Conditions (hereinafter: “**Terms**”) by which you or your organization (collectively referred to as “**Customer**”, “you” or “your” and words of similar meaning) use the BlueConic cloud service (hereinafter the “**Service**”) to the extent made available to you by BlueConic, Inc. and/or its affiliates (collectively, “**BlueConic**”, “**we**”, “**us**” and words of similar meaning), as the Service is described in more detail in these Terms and/or as further specified in one or more order forms that are signed by Customer and BlueConic. These Terms apply to your use of the Service and are subject to the further restrictions and obligations as identified in one or more Order Forms and/or as published on the **BlueConic website** (or any successor of the BlueConic website, and as amended or updated from time to time, the “BlueConic Website”) (collectively, these Terms, the Order Form(s) and the BlueConic Website constitute and are referred to herein as the “**Agreement**”). The Agreement represents our entire understanding regarding the Service and related matters. Deviation from the Agreement requires a written consent from BlueConic.

By using the Service in any manner, including by embedding our code in any website, application or other product, service or software, or using our software development kit (“**SDK**”) or API on, or in connection with one or more of your “**Channels**” (meaning a communication domain which Customer can use to communicate online with its audience, including but not limited to a website, a mobile application, a social media account, or a portion of any of the foregoing), you unconditionally agree to be bound by these Terms.

BlueConic may modify or update the Service, these Terms and the BlueConic Website from time to time in its sole discretion without prior notice to you. Your continued use of the Service after any such change constitutes your acceptance of any such changes. For this reason, we encourage you to review these Terms and the BlueConic Website regularly. If you do not agree to any of such changes or any future terms and conditions applicable to the Service, do not use or access (or continue to use or access) the Service. This Agreement applies to all “**Users**” (meaning all employees of Customer or its affiliates that will make use of the Service and who are authorized to access the Service by being provided with an assigned user name and password) and all others who access the Service on your behalf or through your account.

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

Use of the Service

The Service gives the Customer access to a tenant that enables you to collect and unify individual profiles (i.e., of your customers, users or visitors) to determine and activate optimal interactions across your Channels.

Eligibility

You may use the Service only if you have the legal capacity and authority to form a legally binding contract with BlueConic, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. Any use of or access to the Service by anyone under age 13 is strictly prohibited and in violation of this Agreement. Users previously removed from the Service by BlueConic cannot use the Service.

Access and Accounts

You need to register with BlueConic to obtain a tenant and an account. You may never use another customer's tenant or account, and the Service is designed to prevent you from having the ability to access or use the tenant or account of any other customer of BlueConic. When registering and administering your account and tenant, you must provide your accurate and complete information with respect to all fields requested, which shall include your full legal name and address, business e-mail address, and the address of the principal place of business of the organization on whose behalf you are registering and administering the tenant and account. It is your responsibility to maintain and promptly update this account information to keep it true, accurate, current and complete. Every Customer is restricted to a single tenant unless agreed otherwise in writing by BlueConic.

Your account gives you access to the Service only with respect to the tenant provided by BlueConic to you (and you are prohibited from accessing, attempting to access, using and attempting to use any tenant provided to another customer of BlueConic), and only with respect to the functionality that we may establish and maintain from time to time and at our sole discretion. Customer is solely responsible for all of the activity that occurs in Customer's tenant. Every User must keep account passwords secure. You must notify BlueConic immediately of any breach of security or unauthorized use of your account or your tenant. BlueConic will not be liable for, as expressly disclaims any and all liability related directly or indirectly to, any losses caused by any unauthorized use of your account or tenant.

You or other Users with administrative access to Customer's tenant may control the User settings for your tenant and how you and your Users interact with the Service by changing the settings in the "Personal Settings" section of the Service. If you are the "Application Manager" of the tenant of Customer, you are allowed to create and authorize other Users within Customer's organization to use the same tenant, up to the maximum number of Users allowed for you in your tier described on the BlueConic Website and/or as otherwise identified in the Agreement.

By providing your and other Users' business (email) address you consent to our use of the email address to send you or any Users within your organization Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as notifications of changes to features of the Service.

Notwithstanding the foregoing, BlueConic reserves the right, in its sole discretion, to refuse to permit any individual or entity to register as a Customer or as a User.

Service Rules

You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated "scraping"; (ii) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Service in a manner that sends more request messages to the Service servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser; (iii) transmitting spam or other unsolicited email, or using the Service to communicate any unlawful, harmful, offensive, threatening, abusive, libelous, harassing, defamatory, vulgar, obscene, profane, hateful, sexually explicit, racially, ethnically, or otherwise objectionable material of any sort, including, without limitation, any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law, rule or regulation; (iv) attempting to interfere with or compromise the system integrity or security of the Service (including, without limitation, attempting to access the tenant or account of any other customer of BlueConic) or to decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose (as reasonably determined by us in our sole discretion), an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, malicious code or other software agents through the Service; (vii) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (viii) interfering with the proper working of the Service; (ix) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; or (x) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

We may permanently or temporarily suspend, restrict or terminate your access to the Service without notice and liability (i) if you fail to pay any Fee due to BlueConic, and/or (ii) if in our sole determination you violate any provision of the Agreement or use of the Service outside the usage restrictions of your tier and/or the Fair Use policies identified in the Agreement. Upon termination for cause, Customer's right to access or use the Service shall immediately cease, and BlueConic shall have no obligation to maintain or forward any data entered into, collected by or maintained or saved on the Service with respect to your tenant and/or account (hereinafter referred to as "Process Data").

License Grant; Restrictions

Grant

Subject to the terms and conditions of this Agreement (including the timely payment of any and all fees due, and any applicable usage restrictions and Fair Use policies), you are hereby granted a non-exclusive, limited, non-transferable, non-sub licensable, freely revocable, license to use the Service solely for Customer's internal business purposes on or connected to your Channels or other types of platforms or properties that we may support from time to time. You may only integrate the Service on Channels owned, operated or controlled by Customer or on platforms or other properties that you have the legal right to access. BlueConic hereby reserves all rights in and to the Service and the BlueConic Content (as defined below in the Section entitled 'BlueConic's Proprietary Rights'), except for those rights that are expressly granted to you herein.

Restrictions

Except as expressly permitted under the previous Section ('Grant'), you agree not to use, copy, modify, create any derivative works of, reverse engineer, decompile or otherwise attempt to extract the source code of the software underlying the Service or any part thereof.

Ownership rights

BlueConic's Proprietary Rights

As between you and BlueConic, BlueConic and its licensors exclusively own all rights, title and interest in and to the Service, including without limitation any improvements or updates thereto, and all materials therein or transferred thereby, including, without limitation, all software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, and copyrights (the "BlueConic Content"), and all Intellectual Property Rights (as defined below) related thereto and derivative works of the foregoing. Except as expressly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights (as defined below), and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the BlueConic Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited. For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

Customer's Proprietary Rights

As agreed between Customer and BlueConic, and subject to the following Section ‘Licenses to BlueConic’, Customer owns all right, title and interest in and to all of Customers’ Channels, all Process Data including any personal data entered into and/or collected by the Service and content embedded thereon or contained therein (excluding the Service and excluding BlueConic Content), and any Intellectual Property Rights for any of the foregoing embodied therein.

Licenses to BlueConic

Your Process Data

Customer expressly grants to BlueConic, and represents and warrants that Customer has all rights necessary to so grant (without infringing on the Intellectual Property Rights of any third party) to BlueConic, a royalty-free, fully-paid, sub-licensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, transmit, distribute, modify, reproduce and archive any Process Data for the exclusive purposes of (a) providing the Service to Customer in accordance with the Agreement, and (b) developing, benchmarking, maintaining, supporting and improving the Service, and preparing aggregate reporting about the Service (so long as any Process Data is not reasonably identifiable with an individual).

Feedback and Improvements

You may choose to submit comments, suggestions, feedback, or ideas about the Service, including without limitation about how to improve the Service or our products (collectively, “**Ideas**”). By submitting any Idea to BlueConic, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place BlueConic under any fiduciary or other obligation, and that we are free (i) to use all of your Ideas (and any and all derivatives thereof) for any and all purposes without any additional compensation to you (or to any third party), and/or (ii) to disclose any and all of your Ideas (and any and all derivatives thereof) on a non-confidential basis (or otherwise) to anyone. You further acknowledge that, by acceptance of your submission, BlueConic does not waive any rights to use similar or related ideas previously known to BlueConic, or developed by its officers, employees, contractors, agents or other representatives, or otherwise obtained from sources other than you.

Free Services

If you receive access to a tenant providing the Service for free (a “**Free Access Subscription**”) or access to a tenant solely designated for development purposes (a “**Sandbox**”), then you may use the Free Access Subscription and/or Sandbox in accordance with the terms and conditions of this Agreement, including, without limitation, the usage restrictions as set forth on the BlueConic Website, the policies set forth in the ‘Fair Use’ Section of this Agreement, or any other restrictions that otherwise are conveyed to you from time to time by BlueConic. All Free Access Subscriptions and access to Sandboxes are subject to change from time to time by BlueConic in its sole discretion without prior notice; changes may include the termination of the provision of certain features of the Service, either to you or generally to other BlueConic customers; or changes to or the creation of usage limits, policies or other restrictions on the use

of the Service. BlueConic may immediately suspend, revoke or terminate your Free Access Subscription or right to access a Sandbox at any time for any reason without liability to you. BlueConic does not guarantee that Sandboxes or Free Access Subscriptions will be made available in the future under the same commercial or other terms that currently are available (or that are made available in the future). BlueConic may use all Process Data collected via your Free Access Subscription for testing purposes and to provide for recommendations. You acknowledge that your Free Access Subscription or Sandbox may not be complete or fully functional and may contain bugs, errors, omissions and other problems.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ALL FREE ACCESS SUBSCRIPTION SERVICES AND SANDBOXES OF THE SERVICE ARE PROVIDED “AS IS”, AND BLUECONIC WILL HAVE NO WARRANTY, INDEMNITY OR SUPPORT OBLIGATIONS OF ANY KIND OR NATURE WITH RESPECT TO FREE ACCESS SUBSCRIPTIONS, SANDBOXES OR BETA RELEASES.

Fair Use

You are welcome to register for a Free Access Subscription to use our Service. We currently have not set fixed limits on the amount of profiles, interactions or traffic you are allowed to generate when you are granted access to a tenant based on a Free Access Subscription. By using a Free Access Subscription to our Service you will create a stream of data, storage, and traffic on the network and infrastructure of BlueConic and its third party suppliers. To prevent excessive use of this capacity by Users, certain fair use policies, as specified below (and which are subject to change by BlueConic from time to time), are applicable to all tenants providing the Service to Customers with a Free Access Subscription.

Data Retention

A fair use policy applies to the maximum number of months that Process Data is maintained on or stored by the Service when using a Free Access Subscription (the “**Data Retention Period**”). A Data Retention Period of (for example) three (3) months means that the Service will remove from storage all profile data entries with a creation date older than three (3) months, counted from the first business day of each subsequent quarter since the date of activation of your tenant. Although we are not required to do so, we plan to use commercially reasonable efforts to notify you in advance before we enforce the Data Retention Period policy for your tenant.

Profile Reach Cap

BlueConic may, in its sole discretion, establish a cap on the number/amount of profiles of your total audience that you effectively will be able to reach using the Service with a Free Access Subscription (a “Profile Reach Cap”). In the event that such a cap, relative to your total audience, is reached, new profiles will still be created, but you will not be able to collect data on individuals connected to those new profiles nor will you be able to activate interactions for those new profiles. Although we are not required to do so, when a Profile Reach Cap is deemed by BlueConic (in its sole discretion) to have been reached for your tenant, we plan to

use commercially reasonable efforts to make you aware that the Profile Reach Cap has been met.

Our fair use policies on Data Retention Periods and Profile Reach Caps, whether specified in the Agreement, published on the BlueConic Website, or otherwise communicated to you by BlueConic are subject to change from time to time by BlueConic in its sole discretion. Notwithstanding anything in this Agreement to the contrary, BlueConic does not guarantee any Data Retention Period nor Profile Reach for Free Access Subscriptions.

Paid Services

Billing Policies

Certain aspects of the Service, or bundles or subscription tiers to use the Service may be provided for a fee or other charge (a “**Paid Subscription**”). If you elect to use paid aspects of the Service, you agree to the terms of sale, pricing, payment and billing policies applicable to such fees and charges, whether documented in or linked in this Agreement or as agreed in an applicable Order Form. BlueConic may add new features of the Service for additional fees and charges, or amend the fees and charges for existing aspects of the Service, at any time in its sole discretion.

No Refunds

In the event you cancel your Paid Subscription, you shall receive no refund or exchange for any unused period of time then remaining on a Paid Subscription, any license or subscription fees for any portion of the Service, any content or data associated with your account, or for anything else.

Subscription Terms

You acknowledge and agree that you shall be responsible for paying all fees due for the full term of your Paid Subscription as agreed in each applicable Order form, whether or not you cancel such Paid Subscription prior to the end of such term. You further acknowledge and agree that the term of your Paid Subscription shall automatically renew for additional successive terms equal to the period of your initial term, unless you provide BlueConic with notice of your intent not to renew your Paid Subscription at least sixty (60) days prior to the end of the then-current subscription term.

Payment Information; Taxes

All information that you provide in connection with a purchase or transaction or other monetary interaction with the Service must be accurate, complete, and current. You agree to pay all charges incurred by you, your Users, or users of your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary interaction with the Service at the prices in effect when such charges are incurred. You shall pay all applicable subscription fees, including any sales, excise, service, use or other taxes now

or hereafter imposed upon or required to be collected by BlueConic by any authority in connection with or arising from the Service and/or this Agreement, excluding taxes based upon BlueConic's net income. You shall pay each invoice issued by BlueConic by the applicable due date and in the currency specified by BlueConic. Any amounts not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less.

Consent to the Collection and Use of Data and Content

Customer understands that the technical processing and transmission of Customer's data is fundamentally necessary in order to run the Service. Customer expressly consents to BlueConic's interception and storage of Customer's electronic communications and/or Process Data, and Customer acknowledges and understands that this will involve transmission over the Internet, and over various networks, the security of which cannot be guaranteed by BlueConic.

If BlueConic processes any personal data on Customer's behalf when performing BlueConic's obligations under this Agreement, the Parties hereby agree that Customer shall be the data controller and BlueConic shall be a data processor in any such case, and: (a) Customer shall ensure that Customer is entitled to transfer the relevant personal data to BlueConic so that BlueConic may lawfully use, process and transfer the personal data in accordance with this Agreement on Customer's behalf; and (b) Customer shall ensure that the relevant third parties (such as members of Customer's audience) have given their consent to such use, processing, and transfer of all personal data supplied by Customer as required by all applicable data protection laws, rules and regulations. BlueConic takes no responsibility and assumes no liability for any Process Data including personal data or content that Customer or any other User or third party provides, posts, publishes or transmits over the Service. Customer shall be solely responsible for all content and Process Data, including personal data and the consequences of using, disclosing, or transmitting it, and Customers agrees that BlueConic is only acting as a passive conduit.

Customer represents and warrants that it will: (a) comply with all applicable laws and regulations with respect to its activities under these Terms; (b) obtain and maintain all necessary licenses, consents, permits and permissions necessary for BlueConic, its subsidiaries, contractors, affiliates, suppliers and agents, to use the data that Customer supplies in accordance with the terms of the Agreement; (c) ensure that Customer's Users use the Service, online service documentation on the BlueConic Website, and all Process Data in accordance with the terms and conditions of the Agreement and shall be responsible for any Users' violation of the Agreement (as if such violation had been committed by Customer itself); and (d) assume sole responsibility for its and its Users' use of Process Data obtained from the use of the Service, and for conclusions drawn from such use.

Representations and Warranties

Each party represents and warrants that such party has full right, power, and authority to enter into and perform their obligations under the Agreement without the consent of any third party.

Customer hereby represents, warrants, and covenants to use the Service in accordance with the Agreement and all applicable laws, rules and regulations.

Only with regard to a Paid Subscription of the Service, BlueConic represents, warrants and covenants that BlueConic has implemented all commercially reasonable and industry standard technical and organizational measures designed to secure Process Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, Customer acknowledges that BlueConic cannot guarantee that unauthorized third parties will never be able to defeat such measures.

Only with regard to a Paid Subscription of the Service, BlueConic represents, warrants and covenants that BlueConic will use commercially reasonable efforts to prevent the Service from introducing into your computer systems, databases, or software, any virus or any other contaminants that may be used to access, alter, delete, disrupt, damage, disable, inhibit, or shut down your computer systems, databases, or software, in a manner other than in accordance with the terms of this Agreement.

Non-Conformance and Errors

Only with regard to a Paid Subscription of the Service (and not with regard with any Free Subscription Access, Sandbox), BlueConic warrants that the Service will perform substantially in accordance with the Online Service Documentation; provided that (a) Customer has paid all Fees due and payable for such Service, (b) BlueConic shall not be responsible to the extent such non-conformance is caused by use of the Service contrary to the terms of the Agreement or BlueConic's instructions, or in any way due to modification or alteration of the Service by any party other than BlueConic (or any employees, contractors or other representatives of BlueConic); and (c) BlueConic shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to BlueConic by Customer in connection with the Service, in any Process Data, or by any actions taken by BlueConic at Customer's direction or request.

In case of an **"Error"** (meaning a demonstrable and reproducible failure in the Service such that the Service does not meet the specifications set forth in the online service documentation in a substantial way) that occurs during Customer's usage of a Paid Subscription of the Service, and that is made known by Customer to BlueConic, BlueConic will at its discretion, either use reasonable commercial efforts to correct any such non-conformance, or will provide Customer with an alternative means of meeting such specifications. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the warranties contained in this Section.

Other Products and Services than the Service

BlueConic or third parties may from time to time make available to Customer products and/or services, including but not limited to non-standard and/or non-BlueConic applications, plug-ins, customizations and implementation or other consulting services (collectively: "Other Services"). Any installation or enablement by Customer or on behalf of Customer of such

Other Services, and any exchange of data between Customer and any of such Other Service, is solely between Customer and the applicable provider (and if such provider is BlueConic, the provision by BlueConic of such Other Services shall be pursuant to a separate agreement). BlueConic does not warrant or support (pursuant to the Agreement) any of such Other Service, whether or not they are designated by BlueConic as ‘certified’ or otherwise, except as specified in an Order Form.

If non-standard applications, plug-ins or customizations are installed or enabled by Customer or on behalf of Customer for use with the Service, Customer acknowledges that BlueConic may allow providers of those non-standard applications, plug-ins or customizations to access Customers’ data as required for the interoperation of such non-standard applications, plug-ins or customizations with the Service. BlueConic shall not be responsible for any disclosure, modification or deletion of Customer data resulting from any such access by the providers of non-standard applications, plug-ins or customizations. The Service shall allow Customer to restrict such access by restricting Users from installing or enabling such non-standard applications, plug-ins or customizations for use with the Service.

The Service may contain features designed to interoperate with non-BlueConic applications (for example Google, Facebook or Twitter). To use such features, Customer may be required to obtain access to such non-BlueConic applications from their providers. If the provider of any such non-BlueConic application ceases to make the non-BlueConic application available for interoperation with the corresponding Service features on reasonable terms, BlueConic may cease providing such Service features without entitling Customer to any refund, credit, or other compensation.

The Service may contain links to other websites (“**Linked Websites**”). Those links are provided for your convenience and reference only and may not remain current or be maintained. We do not control such Linked Websites, and therefore we are not responsible for the content or privacy practices associated with any of the Linked Websites. We reserve the right to terminate the links at any time. Our links with the Linked Websites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of the Linked Websites, or of any information, graphics, materials, products or services referred to or contained on those Linked Websites. We cannot be held liable or responsible for the accuracy, copyright compliance, legality or decency of any material contained in any third party websites, and you hereby irrevocably waive any claims that you may have against us with respect to such websites.

Disclaimer of Additional Warranties

EXCEPT FOR THE LIMITED WARRANTY IN THIS SECTION ‘WARRANTY’ AND THE SECTION ‘REPRESENTATIONS AND WARRANTIES’, ALL SERVICES ARE PROVIDED ON AN “AS IS” AND AS AVAILABLE BASIS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BLUECONIC NOR ITS SUBSIDIARIES, AFFILIATES AND SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR

PURPOSE OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. BLUECONIC MAKES NEITHER WARRANTY THAT THE SERVICES WILL BE ERROR-FREE NOR THAT ALL ERRORS WILL BE CORRECTED. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. BLUECONIC SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BLUECONIC. BLUECONIC DOES NOT WARRANT THAT ANY CHANGES YOU MAKE TO CUSTOMER'S CHANNELS WILL MEET YOUR EXPECTATIONS AND IS NOT RESPONSIBLE FOR ANY DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY YOU BASED UPON YOUR USE OF THE SERVICES.

The parties agree that the limitations specified in this Section 'Warranty' will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose. Each party acknowledges that the foregoing limitations are an essential element of the Agreement and a reasonable allocation of risk between the parties and that in the absence of such limitations the pricing and other terms set forth in this Agreement would be substantially different.

Indemnity

Each party will indemnify and hold harmless the other party and its successors and their respective subsidiaries, affiliates, officers, directors and employees against and from all third party: claims, actions, demands, damages, liability and expenses (including, without limitation, court costs and reasonable attorneys' fees) (together, "**Claims**") arising out of or in connection with the indemnifying party's breach or alleged breach of the Sections 'Consent to the Collection and Use of Data and Content' or 'Representations and Warranties' of this Agreement. You will further indemnify and hold harmless BlueConic and our successors and our affiliates, officers, directors and employees against and from all Claims arising out of or in connection with your use of the Service and in connection with your Channels, including without limitation any violation or alleged violation of any law or third-party rights by you or your Channels or any data, content, or information contained therein or transferred thereby. The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt written notice of any Claim for which the indemnified party is seeking indemnity (provided however, the failure to give timely notice shall not relieve the indemnifying party of its obligations under this section except to the extent that such untimely notice materially impairs the ability of the indemnifying party to defend); (ii) granting complete control of the defense and settlement to the indemnifying party (provided however, the indemnified party may participate with counsel of its choosing at its own expense); and (iii) reasonably cooperating with the indemnifying party, at the indemnifying party's expense, in defense and settlement of such Claim. The indemnifying party shall not, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect to which indemnified party is or could be indemnified hereunder unless such settlement either (a) includes an unconditional release of the indemnified party from all

liability on all Claims that are the subject matter of such proceeding or (b) is consented to in writing by the indemnified party (which consent shall not be unreasonably withheld).

Limitation of Liability

NEITHER BLUECONIC NOR ITS SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS WILL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. BLUECONIC'S ITS SUPPLIERS' AND ITS AFFILIATES ENTIRE LIABILITY TO YOU SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO BLUECONIC UNDER THIS AGREEMENT DURING THE THEN CURRENT SUBSCRIPTION TERM, OR DURING THE MOST RECENT TWELVE (12) MONTHS, WHICHEVER IS LESS.

Confidentiality

"Confidential Information" of either party will mean information disclosed to or learned by the receiving party concerning the disclosing party's business, customers, products, proposed products, plans, inventions, processes and techniques, which information is designated as "Confidential", "Proprietary" or some similar designation or should reasonably be considered to be confidential or proprietary due to its nature or the context of its disclosure. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault or breach on the part of the receiving party; (ii) the receiving party obtains from a third party rightfully, without breach of nondisclosure obligations and without restriction on disclosure; or (iii) the disclosing party regularly provides to others without restriction on disclosure. Except as explicitly authorized in writing by this Agreement or otherwise, each party will: (a) not use, for its own benefit or the benefit of any third party, the other party's Confidential Information; and (b) use all reasonable care, but in no event less care than it takes to protect its own Confidential Information of similar importance, to protect the other party's Confidential Information from unauthorized use, disclosure and publication. Both parties acknowledge and agree that the breach of this Section (Confidentiality) could cause great or irreparable injury to the disclosing party and that pecuniary compensation would not afford adequate relief, and therefore, that upon any such unauthorized disclosure by the receiving party, the disclosing party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. Within fourteen (14) days after termination of this Agreement, each receiving party shall destroy or deliver to the disclosing party, at the disclosing party's option, all materials in the receiving party's possession or control that contain or disclose any Confidential Information of the disclosing party.

Privacy

To learn more about how we protect your privacy please visit our Privacy Policy on the BlueConic Website.

Termination

BlueConic, in its sole discretion, may terminate or suspend your account at any time if, in BlueConic's sole discretion, you violate any term or provision of this Agreement without prior notice or liability to you. If Customer defaults in the performance of any material provision of this Agreement, including without limitation any payment obligations due, then BlueConic may give written notice to Customer that if the default is not cured within thirty (30) days, the Agreement will be terminated. If BlueConic gives such notice and the default is not cured during the thirty (30) day period, then the Agreement shall automatically terminate at the end of that period. Upon termination Customer's right to use the Service will immediately cease and all amounts due shall become immediately due and payable. After the termination of this Agreement, Customer shall retain control over the Process Data. Any term and/or condition of the Agreement, which by their nature extend beyond its (and any) termination shall survive termination of any kind and remain in effect. Costs related to the transfer of Process Data to another application as requested by Customer upon termination are not included in the Service fees. If Customer requests such work, and if BlueConic is willing to perform such work, it shall be subject to agreed upon fees or costs to be paid in advance. BlueConic does not guarantee that the Process Data available during this Agreement and/or after termination of this Agreement can be transferred to another application. Customer is fully responsible for the completeness and accuracy of Process Data from the time such is read into another application.

Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by BlueConic without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

General

Independent Contractors

Neither party has the ability to bind the other party to any agreements or other obligations and will not attempt to do so. BlueConic and you are independent contractors, and nothing in this Agreement creates any partnership, joint venture or agency relationship. As between each other, each party is fully responsible for all persons and entities it employs or retains.

Use of Your Name

You agree that BlueConic may use your name, logo, or any other identifying words or marks used by and/or associated with you to identify you as a customer of BlueConic, for use in connection with marketing, promoting, and advertising the Service, for use in customer references and case studies involving you, and for use in other activities related to BlueConic's business.

Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree that: (i) the Service shall be deemed solely based in Massachusetts; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over BlueConic, either specific or general, in jurisdictions other than Massachusetts. You agree to submit to the personal jurisdiction of a state court located in Massachusetts, for any actions relating to the Service and/or this Agreement, including any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our Intellectual Property Rights, as set forth in the Arbitration provision below.

Arbitration

In the unlikely event that BlueConic has not been able to resolve a dispute it has with you after attempting to do so informally, we each agree to resolve any claim, dispute, or controversy (excluding any BlueConic claims for injunctive or other equitable relief) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, “**Actions**”), by binding arbitration by the American Arbitration Association (“**AAA**”) in the Commonwealth of Massachusetts under the commercial rules then in effect for the AAA, except as provided herein. The award rendered by the arbitrator may include costs of arbitration, reasonable attorneys’ fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed to prevent BlueConic from seeking injunctive or other equitable relief from the courts as necessary to protect any of BLUECONIC’S Intellectual Property Rights or other proprietary interests. ALL ACTIONS MUST BE BROUGHT IN THE PARTIES’ INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND BLUECONIC ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Local Laws and export restrictions

The Service is controlled and operated from facilities in the United States of America (“**USA**”) if no further specification is provided. The Service is controlled and operated from facilities in the European Union (“**EU**”, e.g. Ireland) if specified in your Order form with BlueConic. BlueConic makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions than the USA or the EU do so at their own volition and are entirely responsible for compliance with all applicable USA, EU and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the USA, or are a foreign person or entity blocked or denied by the USA government. Unless

otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the USA or the EU.

Notification Procedures

All notices from you to BlueConic must be given in writing and sent by registered or certified mail (postage prepaid and return receipt requested), by hand or messenger delivery, by overnight delivery service, by facsimile with receipt confirmed, or by electronic mail, to BlueConic's addresses as provided in the Agreement (or, if not so provided in the Agreement, as provided on the BlueConic Website). Any notice or report delivered in accordance with this Section will be deemed given on the date actually delivered; provided that any notice or report deemed given or due on a Saturday, Sunday or legal holiday will be deemed given or due on the next business day. BlueConic may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on the BlueConic Website, as determined by BlueConic in our sole discretion. BlueConic's reserves the right to determine the form and means of providing notifications to you and your Users, provided that you may opt out of certain means of notification as described in this Agreement. BlueConic is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us.

DMCA

You shall be responsible for handling and processing notices of alleged infringement by Customer Properties in accordance with the Digital Millennium Copyright Act (or any successors thereto or similar laws in foreign jurisdictions) ("**DMCA**") and shall promptly notify BlueConic if you become aware of any such notices or takedown requests. Notwithstanding the foregoing, without limiting BlueConic's other rights and remedies hereunder, BlueConic reserves the right to respond to any DMCA notices it receives in accordance with its DMCA policies and to suspend or terminate access to the Service for repeat infringers.

Entire Agreement/Severability

This Agreement, together with any Order Forms, amendments and any additional agreements you may enter into with BlueConic in connection with the Service, shall constitute the entire agreement between you and BlueConic concerning the Service. If a court of competent jurisdiction deems any provision of this Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

No Waiver

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and BlueConic's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.