



PASS-THROUGH TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICES OFFERED BY BLUMIRA, INC. ("BLUMIRA"). THESE BLUMIRA PASS-THROUGH SERVICE TERMS AND CONDITIONS (THE "AGREEMENT") CONSTITUTE A CONTRACT BETWEEN BLUMIRA AND YOU FOR YOUR USE OF AND ACCESS TO THE SERVICES OBTAINED VIA A RESELLER. BLUMIRA WISHES TO PROVIDE AND YOU WISH TO HAVE THE RIGHT TO ACCESS PURSUANT TO THE TERMS OF THIS AGREEMENT, A SUBSCRIPTION SERVICE. BY ACCESSING THE SERVICES, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY, ORGANIZATION OR OTHER ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY AND ARE AGREEING TO THIS AGREEMENT ON BEHALF OF SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY TO ENTER INTO THIS AGREEMENT OR DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICES.

1. The Services.

- a. Blumira grants Customer a nonexclusive, limited, personal, nonsublicensable, nontransferable right and license to internally access and use the Blumira product(s) and/or service(s) (the "Service" or the "Services") as specified in such ordering document (the "Order Form") that is entered into between an entity that is authorized by Blumira to resell and license access to the Services to Customer (the "Reseller") and Blumira during the applicable Order Form Term for the internal business purposes of Customer, only as provided herein and only in accordance with Blumira's applicable official user documentation for such Service.. Blumira reserves the right to review Customer's account and take further action if usage is beyond normal standards, outside of permitted usage or adversely affects Blumira's operations. If Blumira determines that Customer is engaging in abnormal or impermissible usage, Blumira will use commercially reasonable efforts to inform Customer and provide the opportunity to correct the improper usage. If Customer fails to correct usage activity to conform to normal use, or in the event Customer's usage is, in the sole discretion of Blumira, adversely affecting Blumira's operations, Blumira may suspend or terminate Customer's access to the Service with or without notice.
- b. From time to time, Blumira may provide upgrades, patches, enhancements, or fixes for the Services to its customers generally without additional charge ("Updates"), and such Updates will become part of the Services and subject to this Agreement; provided that Blumira shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that Blumira may cease supporting old versions or releases of the Services at any time in its sole discretion; provided that Blumira shall use commercially reasonable efforts to give Customer reasonable prior notice of any material changes.

2. Implementation.

- a. Blumira agrees to use reasonable commercial efforts to provide standard implementation assistance for the Service only if and to the extent such assistance is set forth on such Order Form ("Implementation Assistance").
- b. Customer acknowledges and agrees that the Service may operate with or using application programming interfaces (APIs) and associated services operated or provided by third parties ("Third Party Services"). Blumira is not responsible for the operation of such Third Party Services nor the availability or operation of the Service to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services (including any Customer Data or other information relating thereto) and for complying with any applicable terms or conditions thereof. Blumira does not make any representations or warranties with respect to Third Party Services. Any exchange of data or other interaction between Customer and Third Party Services is solely between Customer and such third party provider and is governed by such third party's terms and conditions.

3. Ownership; Feedback.

- a. As between the parties, Blumira retains all right, title, and interest in and to the Services, and all software, products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Blumira for the purposes of this Agreement, including any copies and derivative works of the foregoing. Any software which is distributed or otherwise provided to Customer hereunder (including without limitation any software identified on the Order Form) shall be deemed a part of the Services and subject to all of the terms and conditions of this Agreement. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement.
- b. Customer may (but is not obligated to) provide suggestions, comments or other feedback to Blumira with respect to the Service ("Feedback"). Customer hereby grants to Blumira a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. Blumira acknowledges and agrees that all Feedback is provided "AS IS" and without warranty of any kind.

4. Fees; Payment.

- a. Payment of fees for the Services as set forth in an ordering document (the "Fees") is solely between Customer and Reseller. Notwithstanding the foregoing, Customer acknowledges that if any payments owed by Reseller to Blumira for the Services, with respect to Customer, are ten (10) or more days overdue, Blumira may, without limiting its other rights and remedies, suspend the Services after using commercially reasonable efforts to notify Reseller and/or Customer of such overdue payment obligations.

5. Restrictions.

- a. Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Service; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Service; (iv) use the Service for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof; (vi) use the Service to build an application or product that is competitive with any Blumira product or service; (vii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; or (viii) bypass any measures Blumira may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service).
- b. Customer is responsible for all of Customer's activity in connection with the Service, including but not limited to uploading Customer Data (as defined below) onto the Service. Customer is responsible for the use of the Service by any person to whom Customer has given access to the Service.
- c. Customer (i) shall use the Service in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Service in a manner that violates any third party intellectual property, contractual or other proprietary rights.

6. Customer Data. For purposes of this Agreement, "Customer Data" shall mean any data, information or other material provided, uploaded, or submitted by Customer to the Service in the course of using the Service. Customer shall retain all right, title and interest in and to the Customer Data, including all intellectual property rights therein. Customer shall be fully responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Customer Data shall be Customer's Proprietary Information (defined below)

- a. Blumira shall implement and maintain commercially reasonable administrative, physical, and technical security designed to secure the Customer Data from unauthorized third-party access or use.
- b. Notwithstanding anything to the contrary, Blumira may internally use and modify (but not disclose) Customer Data for the purposes of providing the Service to Customer and generating Aggregated Anonymous Data (as defined below). Blumira may freely use and make available Aggregated Anonymous Data for Blumira's business purposes (including

without limitation, for purposes of improving, testing, operating, promoting and marketing Blumira's products and services). "Aggregated Anonymous Data" means data submitted to, collected by, or generated by Blumira in connection with Customer's use of the Service, but only in aggregate, anonymized form which can in no way be linked specifically to Customer.

7. Confidentiality.

- a. 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 (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. In any event, Company may use for development, diagnostic and corrective purposes any data and information it collects relating to the Services.
- b. Upon termination of this Agreement, Recipient, upon request, shall certify to Disclosing Party promptly that all such Confidential Information of Disclosing Party, including all copies thereof, has been totally and permanently destroyed.
- c. The parties acknowledge and agree that a breach of this Agreement by either party will cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Disclosing Party shall therefore be entitled, in the event of any actual or threatened violation of this Agreement by Receiving Party, and in addition to any other remedies available to it, to seek to obtain a temporary restraining order and to injunctive relief against the other party to prevent any violations thereof, and to any other appropriate equitable relief.

8. Term; Termination.

- a. Subject to earlier termination by Blumira as expressly provided for in this Agreement, this Agreement shall remain in place until all Order Forms related to the Services have expired or terminated.
- b. In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by providing written notice to the breaching party, provided that the breaching party does not materially cure such breach within thirty (30) days of receipt of such notice. Without limiting the foregoing, Blumira may suspend or limit Customer's access to or use of the Service if (i) Customer's account with Reseller is

past due, or (ii) Customer's use of the Service results in (or is reasonably likely to result in) damage to or material degradation of the Service which interferes with Blumira's ability to provide access to the Service to other customers. In the event of a material breach of this Agreement by either party that is of a type or nature that is not capable of being cured (such as, by way of example and not limitation, an obligation relating to Confidential Information), the non-breaching party may terminate this Agreement and said termination will be effective upon notice to the breaching party.

- c. Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement, the following sections shall survive expiration or termination of this Agreement: 2b, 3, 4 (to the extent Fees remain outstanding), 5, 6, 7, 8d, 8e, and 9 through 12.

9. Indemnification.

- a. Each party ("Indemnitor") shall defend, indemnify, and hold harmless the other party, its affiliates and each of its and its affiliates' employees, contractors, directors, suppliers and representatives (collectively, the "Indemnitee") from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys' fees) ("Losses"), that arise from or relate to any claim that (i) the Customer Data (in the case of Customer as Indemnitor), or (ii) the Service (in the case of Blumira as Indemnitor), infringes, violates, or misappropriates any third party intellectual property or proprietary right.
- b. Each Indemnitor's indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (ii) the option to assume sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor's expense).
- c. The foregoing obligations of Blumira do not apply with respect to the Service or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (i) not created or provided by Blumira (including without limitation any Customer Data), (ii) made in whole or in part in accordance to Customer specifications, (iii) modified after delivery by Blumira, (iv) combined with other products, processes or materials not provided by Blumira (where the alleged Losses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer's use of the Service is not strictly in accordance herewith. For avoidance of doubt, Customer and Reseller are free to agree to indemnities with respect to the Services, and such indemnities shall not form part of this Agreement.

10. Warranty & Disclaimer. THE SERVICE IS PROVIDED FOR "AS IS," WITH NO WARRANTIES WHATSOEVER EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
11. Limitation of Liability. IN NO EVENT SHALL BLUMIRA, ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), OR (II) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID OR PAYABLE BY RESELLER TO BLUMIRA FOR THE SERVICES PROVIDED TO CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.
12. Miscellaneous.
- a. With Customer's consent, Blumira is permitted to display Customer's logo on Blumira's corporate website for the sole purpose of identifying Customer as a Blumira customer. Upon Customer's written request, Blumira will promptly remove any such marks from Blumira's website and, to the extent commercially feasible, Blumira's marketing materials.
 - b. This Agreement represents the entire agreement between Customer and Blumira with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and Blumira with respect thereto.
 - c. The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its conflicts of law rules, and the parties consent to exclusive jurisdiction and venue in the state courts in Washtenaw County Michigan or the federal courts in the Eastern District of Michigan.
 - d. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by

facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notwithstanding anything to the contrary, any notice provided by Blumira to Customer's Reseller shall constitute valid notice to Customer under this Agreement.

- e. Except as otherwise provided herein, no modification or amendment of any provision of this Agreement shall be effective unless agreed by both parties in writing, and no waiver of any provision of this Agreement shall be effective unless in writing and signed by the waiving party.
- f. Neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such party's reasonable control, including, without limitation, the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; pandemics; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts.
- g. Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that (i) Blumira may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement, and (ii) Blumira may utilize subcontractors in the performance of its obligations hereunder.
- h. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees.
- i. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable.
- j. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.
- k. By accessing the Services, Customer expressly agrees that Blumira shall have the benefit of and right to enforce this Agreement against Customer, irrespective of Customer's agreements with any Reseller. Except for Blumira's own benefit, nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement. No entities other than Blumira and Customer may terminate, rescind or agree to any modification, waiver or settlement with respect to this Agreement.