

**Thought Stream LLC, dba Bluescape**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Thought Stream LLC, dba Bluescape (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## **Bluescape Terms and Conditions**

*Effective Date: Tuesday, May 17, 2022*

Thought Stream LLC, dba Bluescape (“Bluescape”) has developed the Bluescape Service, a web-based service that provides certain features and functionalities designed to facilitate enterprise project teams working within a collaborative visual workspace in real time and manage associated collaborative workflows (the “Bluescape Service”).

Bluescape has two different types of users depending on the Bluescape Service used: Customers who use the free version of the Bluescape Service are called “Freemium Users.” While Freemium Users can access and use the Bluescape Service, they have access to a more limited set of Bluescape Service features and functionality than Subscribers.

Customers who use the Bluescape Service as part of a paid Bluescape subscription plan (“Subscription Plan” or “Additional Services”) are called a “Subscriber.” The two types of users are collectively referred to as “Customer” or “you” for purposes of these Terms and Conditions.

**The Terms and Conditions (“Terms” or “Agreement”) are a legal agreement between Bluescape and you governing the right to access and/or use Bluescape Service whether directly from Bluescape or indirectly through one of its resellers (in either case, “Seller”).**

By accepting the Terms in writing by executing a written purchase order, you represent and warrant that you are over the age of 16 have the authority to enter into this Agreement, and you are agreeing to be bound by all the Terms. By executing a written order for the Bluescape Service, the Ordering Activity under GSA Schedule contracts identified in the Purchase Order (“Customer”) agrees to the Terms. If you do not agree, Customer will not access or use the Bluescape Service. Please note that if you have a separate written agreement with Bluescape for your access and use of the Bluescape Service, then to the extent that the terms and conditions of the prior written agreement directly contradict the Terms, the terms and conditions of the prior written agreement will govern.

### **1. Services**

1.1 Orders. The details of a Subscription Plan shall be as set forth in an ordering document offered by Seller and accepted by Subscriber (“Order”) and will set forth the specific details and parameters of the Bluescape Service being ordered, including, as applicable, the License Type and License Term, Users, Training, Maintenance and Support, Uptime Commitment, and any other details, restrictions, or limitations. Orders may be in paper form or may be provided digitally, including through a Bluescape E-commerce platform, and upon mutual acceptance will be incorporated by reference into, and made a part of, this Agreement. In the event that Seller agrees to accept an Order submitted on Subscriber’s form of ordering document (purchase orders, etc.), any additional or conflicting terms provided thereon will be expressly rejected unless Bluescape and Customer both agree expressly agree to additional terms in writing. Upon execution (through the mechanism provided in the applicable offer), Orders shall be deemed incorporated by reference into, and made a part of this Agreement.

1.2 Provision of Bluescape Service. Bluescape shall make the Subscription Plan available to Subscriber during the term identified in the Order (“License Term”) pursuant to this Agreement. The Subscription Plan includes those components and features, including third-party software (“Third-Party Software”), set forth or referenced in the license package identified in each Order (a current list of which is available online at <https://www.bluescape.com/pricing/> (the “License Type”), along with all then-current user manuals or other documentation provided by Bluescape (“Documentation”). As applicable, all use of Third-Party Software shall be governed by the respective licenses for such Third-Party Software, a partial list of which may be found at <https://www.bluescape.com/third-party-terms-and-conditions/>. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties. Bluescape shall have the right to modify the Bluescape Service, including adding or subtracting Third-Party Software, components, features or functionality, at any time without notice to Customer. Any such modification shall not materially reduce the functionality of the components, or features that Ordering Activity has contracted for. Any license identified in the applicable package or Order as evaluation, beta, test, trial, or similar designation (“Eval Licenses”) are provided on limited terms and are offered on an as-is, where-is basis without warranty, liability, or service commitment of any kind, and accordingly Sections 1.5, 1.6, 3.4, 7.1, and 8.1, nor any other commitment or obligation of Bluescape with respect thereto shall not apply. Unless otherwise specified in the applicable Order or expressly renewed by mutual agreement in writing, Eval Licenses expire after ninety (90) days. Unless otherwise specified in the applicable Order, all other License Types are granted to Subscribers for an initial License Term of one (1) year, which term may be renewed for subsequent one (1) year periods by executing a written order for the subsequent one (1) year period. The License Term commences upon execution of an Order.

1.3 Authorized Users. “Users” means individuals authorized by Customer to use the Bluescape Service who have been supplied user identifications and passwords by Customer (or by Bluescape at Customer’s request), including Customer’s employees, consultants, clients, and third-party collaborators. An Order may designate specific types of Users. The Bluescape Service provided under a Subscription Plan may be accessed and used only by Authorized Users (including a limit to any specific type of User); provided however, that Customer may add additional Users at the pricing set forth in the applicable Order in accordance with the GSA Schedule Pricelist, pro-rated for the remainder of the applicable annual period at the time such additional Users are added.

1.4 Training. Bluescape may provide training to Subscribers in the Bluescape Service’s use if described in an Order (“Training”).

1.5 Availability of Bluescape Service. Bluescape will use commercially reasonable efforts consistent with prevailing industry standards to maintain the Bluescape Service to be available 24 hours per day, 7 days per week, including holidays. The Bluescape Service may be temporarily unavailable for scheduled maintenance (conducted weekly, typically in connection with a new release or service pack, but not during Support Hours (as defined below)), for unscheduled emergency maintenance, or because of other causes beyond Bluescape’s reasonable control. Notwithstanding the above, in no event will Bluescape be liable to a Freemium User or any third party for any modification, suspension or discontinuance of any part of the Bluescape Service. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE BLUESCAPE SERVICE IS PROVIDED ON AN “AS AVAILABLE” BASIS.

1.6 Maintenance and Support. Bluescape shall provide Freemium Users and Subscriber with the maintenance and support for the Bluescape Service (“Maintenance and Support”) found at

[https://community.bluescape.com/support\\_policy](https://community.bluescape.com/support_policy) and attached hereto as Exhibit A which Bluescape may non-materially update from time to time.

(a) Subscriber acknowledges that Bluescape shall provide Subscriber with access to bug fixes, updates and improvements to the Bluescape Service that are released by Bluescape for general availability to its other commercial customers (“Updates”) on a continuous basis. All Updates will be deemed to be part of the Bluescape Service for purposes of this Subscription Agreement and subject to all of the terms, conditions and restrictions of this Subscription Agreement. In connection with such Updates, Subscriber may be required to implement upgrades or modifications to Subscriber’s networks and other systems. Bluescape shall provide Subscriber with advance notice of all upcoming Updates which require modifications to Subscriber’s systems and shall work with Subscriber’s System Administrator (as defined below) to coordinate the release schedule and installation of such Updates. Subscriber shall implement all required modifications to Subscriber’s systems in accordance with the timing and conditions specified by Bluescape, at Subscriber’s sole expense.

(b) Except as set forth above, no other support services are provided by Bluescape. Bluescape will have no obligation to provide maintenance or support services of any kind to any Freemium User or for problems in the operation or performance of the Bluescape Service to the extent caused by any of the following (“Customer-Generated Error”): (i) any data, files, database or non-Bluescape software used in conjunction with the Bluescape Service; (ii) Customer’s use of the Bluescape Service other than as authorized in this Subscription Plan ; or (iii) Customer’s use of an outdated Bluescape Service (ie. any Bluescape Service ninety (90) days or older from the current release or Updates). If Bluescape determines that it is necessary to perform services for a problem in the operation or performance of the Bluescape Service that is caused by a Customer-Generated Error, then Bluescape will notify Customer as soon as Bluescape is aware of such Customer-Generated Error. Bluescape will not commence any such services until approved by Customer. If such services are performed, Bluescape will have the right to invoice Customer at Bluescape’s then-current professional services rates for such services performed by Bluescape.

1.7 Additional Services. Bluescape may provide implementation services to Subscribers with respect to the Bluescape Service and may provide other services to Subscribers as set forth in an Order (“Additional Services”).

1.8 Additional Applications. To the extent that Customer uses any third-party applications (“Apps”) in conjunction with Bluescape Service, such Apps are strictly governed by their respective terms and conditions. Customer is solely responsible for any use, service, or maintenance of Apps.

## **2. USE OF THE BLUESCAPE SERVICE**

2.1 Use. The Bluescape Service is intended for business use only. Customer shall (a) use the Bluescape Service only for Customer’s internal business purposes, which may include collaboration with outside agencies on Customer’s projects and collaboration with Customer’s clients; (b) be responsible for its Users’ compliance with the applicable License Type and the terms and conditions of this Subscription Agreement and any additional requirements and limitations set forth in the applicable Order; and (c) use commercially reasonable

efforts to prevent unauthorized access to or use of the Bluescape Service and shall promptly notify Bluescape of any such unauthorized access or use of which it becomes aware.

2.2 Restrictions. Customer shall not use the Bluescape Service for consumer purposes, as the Bluescape Service is intended for businesses use only. Customer shall not use the Bluescape Service or any component thereof except as expressly authorized in the Terms, an applicable Order, and by applicable law. Customer shall not, and shall not instruct any person, directly or indirectly, to: (a) reverse engineer, decompile or disassemble the software contained in the Controller, or otherwise attempt to obtain, directly or indirectly, source code for such software or any portion of such software; (b) use the Bluescape Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (c) use the Bluescape Service in a managed services arrangement; (d) attempt to gain unauthorized access to or use of the Bluescape Service or damage, disrupt, or impede the operation of Bluescape's services or systems; (e) transmit any viruses, worms, defects, Trojan horses, or any programming of a destructive nature.; (f) use the Bluescape Service for illegal purposes or for promotion of dangerous activities (g) upload or display publicly any content that contains threatening, abusive, harassing, defamatory, libelous, invasive, hateful, or racially, ethnically or otherwise objectionable material; or (h) use the Services in any manner that may harm minors or that interacts with or targets people under the age of thirteen.

If you are a school, school district, or related person, entity or organization (such as an administrator or educator who accesses the Bluescape Service on their behalf) (each a "School"), then You agree (a) to only provide access to the Bluescape Service to those individuals employed by or enrolled as students in your School or classroom and (b) to be responsible for any Content, communications, and activity that occur under such accounts. To the extent a School offers or requires access to the Bluescape Service to Minors, the School will be responsible for those Users. You agree to uphold Your responsibilities under the FERPA, the Protection of Pupil Rights Amendment ("PPRA"), and the Children's Online Privacy and Protection Act ("COPPA"). COPPA requires that online service providers obtain clear and verifiable parental consent before collecting personal information from children under the age of 13. You represent and warrant that you have the authority to provide consent on behalf of parents in order for Bluescape to collect information from students before allowing children under the age of 13 to access the Bluescape Service. If you are located outside of the United States, you will obtain any required consent or approval from the parent or guardian of any student covered by similar laws and, as a condition to your students' use of the Services, you agree that you will be responsible for complying with such laws

You agree to only provide access to the Bluescape Service to those individuals who have signed either the Bluescape Rules of Behavior, Version 1.0, 2021-07, attached hereto as Exhibit B, or an equivalent Agency Rules of Behavior which is no less restrictive.

2.3 You acknowledge that the Bluescape Service, or a portion thereof, may be subject to the Export Administration Regulations, 15 C.F.R. Parts 730-774, of the United States and may be subject to other applicable country export control and trade sanctions laws ("Export Control and Sanctions Laws"). You and Your End Users may not access, use, export, re-export, divert, transfer or disclose any portion of the Bluescape Service or any related technical information or materials, directly or indirectly, in violation of Export Control and Sanctions Laws. You represent and warrant that: (i) You and Your End Users (a) are not citizens of, or located within, a country or territory that is subject to U.S. trade sanctions or other significant trade

restrictions (including without limitation Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine) and that You and Your End Users will not access or use the Bluescape Service, or export, re-export, divert, or transfer the Bluescape Service, in or to such countries or territories; (b) are not persons, or owned 50% or more, individually or in the aggregate by persons, identified on the U.S. Department of the Treasury's Specially Designated Nationals and Blocked Persons List or Foreign Sanctions Evaders Lists; and (c) are not persons on the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List, or U.S. Department of State proliferation-related lists; (ii) You and Your End Users located in China, Russia, or Venezuela are not Military End Users and will not put the Bluescape Service to a Military End Use, as defined in 15 C.F.R. 744.21; (iii) no Content created or submitted by You or Your End Users is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control and Sanctions Laws; and (iv) You and Your End Users will not take any action that would constitute a violation of, or be penalized under, U.S. antiboycott laws administered by the U.S. Department of Commerce or the U.S. Department of the Treasury. You are solely responsible for complying with the Export Control and Sanctions Laws and monitoring them for any modifications.

### **3. RESPONSIBILITIES**

3.1 Feedback. If Customer provides Bluescape with information, feedback, suggestions and comments regarding the Bluescape Service's features and performance ("Feedback"), Bluescape has the right, but not the obligation, to use Feedback in any way without restriction or obligation to Customer. Bluescape shall be the exclusive owner of, and shall be free to use for any purpose, any ideas, concepts, know-how, or techniques resulting from Feedback, including, without limitation, any modifications or enhancements to the Bluescape Service. Bluescape acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

3.2 Subscriber Onsite Support. If Bluescape shall provide Training or Maintenance and Support on-site at a Subscriber Site, Subscriber agrees (a) Subscriber shall make the on-site components of the Bluescape Service available to Bluescape during normal business hours; (b) Subscriber shall provide Bluescape personnel storage, working space, electricity, a telephone line and any other assistance reasonably requested by Bluescape; (c) Subscriber shall provide Bluescape with sufficient space and sufficient resources to conduct Training; and (d) the premises where the Bluescape Service is located are in a safe condition and that Bluescape's personnel shall not be subject to undue risk or danger while on the premises.

3.3 Customer Data. All data that Customer either utilizes or uploads in connection with usage of any Bluescape Service is defined as ("Customer Data"). Customer will have sole discretion as to which Customer Data it will utilize in connection or use of the Bluescape Service. Customer Data is the sole property of Customer. Customer covenants, represents and warrants that it will comply with (a) its applicable privacy and security policy(ies) and (b) all applicable federal, state, local and international privacy, data protection, and security laws, rules and regulations, including without limitation, laws relating to the collection, use, reuse, processing, storage, security, protection, handling, cross-border transfer and disclosure of personal or regulated data. Customer covenants, represents and warrants that it has all rights and has obtained all necessary consents, permissions and authorization with respect to Customer Data, including without limitation the provision of Customer Data to Bluescape and the collection, use, reuse, processing, storage, security, protection, handling, cross-border transfer and disclosure of personal or regulated data of the Customer Data in connection with Bluescape's provision of the Services, including but not limited to, Statistical Data as set forth in Section 5.4



below. Customer authorizes Bluescape to access or process the Customer Data in an encrypted state and only with Customer's prior written consent in an unencrypted state, as required to provide the Bluescape Service and the Maintenance and Support to Customer.

3.4 Security. Bluescape shall use commercially reasonable efforts in accordance with industry accepted standards used or observed by comparable suppliers of similar services/applications, which standards shall in no event be less than reasonable standards of care in all circumstances, to protect the security and integrity of Customer Data. To the extent that Customer Data is subject to EU General Data Protection Regulation ("GDPR"), Bluescape shall process Customer Data in accordance with GDPR Processing Terms & Conditions, which such terms and conditions may be found at <https://bluescape.com/gdpr-processing-terms/> and attached hereto as Exhibit C . Unless prohibited by law, Bluescape shall promptly inform Customer of all security-related issues that threaten the security of Customer Data discovered or brought to Bluescape's attention ("Security Issue"). Bluescape shall use all commercially reasonable efforts consistent with sound software development practices, taking into account the severity of the risk, to resolve all Security Issues as quickly as possible.

#### **4. FEES AND PAYMENT**

4.1 Fees. Subscriber shall pay Seller the fees set forth in all Orders in accordance with the GSA Schedule Pricelist (the "Fees").

4.2 Additional Costs and Expenses.

(a) Bluescape or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

(b) Subscriber shall reimburse Bluescape for all reasonable travel and living expenses incurred by Bluescape in performing Training, Maintenance and Support or any Additional Services on-site, including transportation, lodging, meals, and other incidental expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, provided that Subscriber has first authorized such expenses, which authorization shall not be unreasonably withheld. Bluescape shall invoice Subscriber for any such expenses on a monthly basis.

4.3 Invoices and Payments. Bluescape or its authorized reseller on its behalf as applicable shall invoice Subscribers for the Fees according to the schedule set forth in the applicable Order. All Fees shall be due and payable within thirty (30) days after receipt of Bluescape's corresponding invoice unless otherwise stated in an applicable Order. Subscribers may elect to allow Bluescape to charge Fees to a credit card on an annual or monthly recurring basis. Bluescape may elect to utilize a PCI compliant third-party to process any such credit card charges. All payments shall be in U.S. Dollars.

4.4 Late Fees. If Subscriber fails to pay any Fees or other charges due by their applicable due date, at Bluescape's discretion, such charges may accrue late charges at the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes

due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

4.5 Reserved.

4.6 Audits. During the Term, Subscriber shall maintain accurate and complete records with respect to its use of the Bluescape Service. Bluescape shall have the right, at its own expense, not more than once per year, on reasonable notice to Subscriber, to perform an audit of such records in order to confirm Subscriber's compliance with the Terms, including the number of authorized Users. Any such audit shall be conducted subject to Government security requirements, during normal business hours and in a manner designed to not unreasonably interfere with Subscriber's ordinary business operations. If an audit discovers that Subscriber has exceeded the number of authorized Users set forth in the Orders, Subscriber shall promptly pay Bluescape the Fees due for such additional Users.

## **5. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

5.1 Limited License. Bluescape grants to Customer a nonexclusive, nontransferable, revocable, worldwide license, without right of sublicense, to access and use the Bluescape Service and any applicable Additional Services for Customer's internal use as set forth in this Agreement. The foregoing license and Customer's use of the Bluescape Service and any Additional Services are also subject to any and all Documentation.

5.2 Ownership by Bluescape. Bluescape owns and shall retain any and all proprietary rights to the Bluescape Service, Training, Maintenance and Support, Additional Services, all Feedback, all data relating to the Bluescape Service's and Additional Services' performance, and all intellectual property, work product, content, ideas, know-how, concepts, methods and techniques created or employed by Bluescape in the delivery of the Bluescape Service and Additional Services, whether pre-existing or developed in the course of providing the Bluescape Service and Additional Services (collectively, the "Bluescape IP"). In the event any right, title or interest arises or vests at any time in Customer to any Bluescape IP, Customer assigns to Bluescape all such right, title and interest. Customer shall execute, and cause its employees and other representatives to execute, all necessary documents to give legal effect to such assignment or otherwise secure Bluescape's ownership of the Bluescape IP.

5.3 Ownership of Customer Data. Customer owns and shall retain all right, title and interest, including all intellectual property rights, in and to the Customer Data.

5.4 Statistical Data. Notwithstanding Section 5.3, Bluescape may aggregate and use for Bluescape's internal business purposes those portions of the Customer Data that relate to how Customer uses the Bluescape Service and Additional Services ("Statistical Data").

5.5 Reservation of Rights. Other than the explicit rights granted in this Agreement, nothing in this Agreement shall be construed or interpreted as granting to Customer any rights or licenses, including any rights of ownership or any other proprietary rights in or to the Bluescape IP or any portion, including any intellectual property rights. Other than the explicit rights granted in this Agreement, nothing in this Agreement shall be construed or interpreted as granting to Bluescape any rights or licenses, including any rights of ownership or

any other proprietary rights in or to the Customer Data or any portion, including any intellectual property rights.

## **6. CONFIDENTIALITY**

6.1 Definition. "Confidential Information" means any information that is disclosed by or on behalf of a party (the "Disclosing Party") to the other party (the "Receiving Party") (whether disclosed in writing, orally, by electronic delivery, by inspection of tangible objects, on office or site visits, or otherwise) that relates to the Disclosing Party's business, finances, affiliates, licensees, licensors, customers, products, services, pricing (excluding GSA Schedule pricing), or intellectual property. Without limitation of the foregoing, all information relating to the Bluescape IP, including the Bluescape Service and Additional Services, shall be deemed Bluescape's Confidential Information and all Customer Data shall be deemed Customer's Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is generally known to the public when first disclosed by or on behalf of the Disclosing Party or thereafter becomes generally known to the public through no act or fault of the Receiving Party; (b) the Receiving Party already had obtained or obtains, without breaching any duty to the Disclosing Party, from a third party that was not under an obligation of nondisclosure; or (c) was or is independently developed by the Receiving Party without use or reference to any information obtained from the Disclosing or any party acting on behalf of the Disclosing Party, as demonstrated by the Disclosing Party's written records.

6.2 Obligations. The Receiving Party shall not: (a) reproduce the Disclosing Party's Confidential Information; (b) use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations under and in accordance with this Agreement; or (c) disclose the Disclosing Party's Confidential Information to any party other than an employee or independent contractor of the Receiving Party having a need to know such Confidential Information and who is under a binding obligation of confidentiality and limitation of use and disclosure consistent with the terms hereof. Neither party, nor any party affiliated with such party, shall remove any copyright or proprietary marking from the other party's Confidential Information.

6.3 Required Disclosure. Notwithstanding anything in this Agreement to the contrary, the Receiving Party may disclose the Disclosing Party's Confidential Information if required by law or court, or by a lawful subpoena issued by any state or Federal court, arbitral, or other governmental order or process, provided the Receiving Party: (a) gives the Disclosing Party immediate written notice as soon as it learns of such requirements in order to permit the Disclosing Party to seek a protective order or other appropriate relief; (b) assists the Disclosing Party in connection with such efforts; and (c) discloses only the Confidential Information required to be disclosed. The Receiving Party shall continue to treat any Confidential Information disclosed pursuant to this Section 6.3 as Confidential Information for all other purposes. Bluescape recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## **7. WARRANTIES AND DISCLAIMERS**

7.1 . Bluescape warrants that the Bluescape Service will achieve in all material respects the functionality described in the Documentation. Customer's sole and exclusive remedy for Bluescape's breach of this warranty shall be that Bluescape shall be required to use commercially reasonable efforts to modify the

Bluescape Service to achieve in all material respects the functionality described in the Documentation and if Bluescape is unable to so modify the Bluescape Service, Customer shall be entitled to terminate this Subscription Agreement and receive a pro-rata refund of the annual Fees pre-paid under this Subscription Agreement for the Bluescape Service for the terminated portion of the Subscription Agreement. Bluescape shall have no obligation with respect to a warranty claim unless notified of such claim within 60 days of Customer's being aware of the first instance of any material functionality problem. Any such notice must be sent to legal@Bluescape.com. The warranties set forth in this Section are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Bluescape Service has been utilized in accordance with this Subscription Agreement.

7.2 Customer Warranty. Customer warrants that it has the full right, power, and authority to allow its Users use the Bluescape Service, including to provide and make available all applicable data and information to Bluescape for the purpose of providing the Bluescape Service, and that Bluescape's use of such data and information in providing the Bluescape Service to Customer and its Users as provided herein does not and will not infringe, misappropriate, or otherwise violate any right (including intellectual property rights, privacy rights, publicity rights, trade secrets, or contractual rights), or any applicable law or regulation.

7.3 YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

(a) YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLUESCAPE EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; (b) BLUESCAPE DOES NOT WARRANT THAT (i) THE SERVICES WILL MEET ALL OF YOUR REQUIREMENTS; (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE; OR (iii) ERRORS IN THE SOFTWARE WILL BE CORRECTED; and (c) ANY TRANSMISSION OF CONTENTS THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM ANY SUCH TRANSMISSION.

7.4 CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1, THE BLUESCAPE SERVICE, TRAINING, MAINTENANCE AND SUPPORT, ADDITIONAL SERVICES, THE BLUESCAPE IP AND ALL COMPONENTS OF ALL OF THE FOREGOING ARE PROVIDED "AS IS". BLUESCAPE DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (B) RELATING TO THE PERFORMANCE OF THE BLUESCAPE SERVICE TRAINING, MAINTENANCE AND SUPPORT, OR ADDITIONAL SERVICES; (C) WITH RESPECT TO ANY RESULTS TO BE OBTAINED FROM THE BLUESCAPE SERVICE, TRAINING, MAINTENANCE AND SUPPORT, OR ADDITIONAL SERVICES; (D) THAT USE OF THE BLUESCAPE SERVICE AND ADDITIONAL SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE; OR (E) WITH RESPECT TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, OR EFFECTIVENESS OF ANY DATA, RESULTS, CONTENT OR OTHER INFORMATION OBTAINED OR GENERATED BY CUSTOMER THROUGH ITS USE OF THE BLUESCAPE SERVICE AND ADDITIONAL SERVICES.

## **8. INDEMNIFICATION**

8.1 Bluescape shall indemnify, have the right to intervene to defend and hold harmless Customer (and its officers, directors, employees, shareholders and agents) from and against any and all third party claims, actions, suits, proceedings, liabilities, losses, damages, fines, injuries, interest or expenses (including reasonable attorneys' fees and costs of investigation and defense) ("Losses") arising from or relating to any claim that the Bluescape Service, when used as permitted in this Subscription Agreement, violate or infringe any intellectual property rights of any third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

8.2 The obligation to indemnify under this Agreement is conditioned on the party receiving the benefit of the indemnity (the "Indemnified Party") providing the party with the obligation (the "Indemnifying Party") with (a) prompt written notice of covered claim, action, suit or proceeding ("Claim"); (b) proper and full information and reasonable assistance to defend and/or settle any such Claim. The Indemnifying Party may not settle any such Claim in any manner that binds the Indemnified Party without the Indemnified Party's prior written consent. Notwithstanding the foregoing, the Indemnified Party may, at its own expense, participate in the defense and settlement of any such Claim.

8.3 Infringement. In the event that a claim subject to Section 8.1 is made or threatened, or Bluescape reasonably believes that Customer's use of the Bluescape Service or any Additional Service is likely to be infringing, Bluescape, at its option and expense, may either (a) secure for Customer the rights necessary to continue to use the applicable Service; (b) modify such Service so that it becomes non-infringing, (c) replace the potentially infringing portion of such Service with a functionally equivalent non-infringing product or service; This Section 8 sets forth Bluescape's entire liability and obligation, and Customer sole and exclusive remedy with respect to any claims of infringement or misappropriation of any intellectual property rights of any other party.

8.4 Exceptions. Notwithstanding the provisions of Section 8, Bluescape shall have no obligation to indemnify Customer with respect to any Losses to the extent resulting from (a) the combination of the Bluescape Service or any Additional Service or portions thereof with products or services not provided by Bluescape or reasonably anticipated to be used in conjunction with the Bluescape Services or Additional Services; (b) the modification of the Bluescape Service or any Additional Service by any party other than Bluescape; or (c) the use of the Bluescape Service or Additional Services in a manner not expressly permitted by this Subscription Agreement.

## **9. LIMITATION OF LIABILITY**

9.1 Limitation of Cumulative Liability. EXCEPT FOR BLUESCAPE'S LIABILITY UNDER SECTION 8.1, BLUESCAPE'S TOTAL CUMULATIVE LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WITH RESPECT TO THE BLUESCAPE IP, THE BLUESCAPE SERVICE AND THE ADDITIONAL SERVICES PROVIDED UNDER THIS SUBSCRIPTION AGREEMENT SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CUSTOMER TO BLUESCAPE UNDER THE APPLICABLE ORDER.

9.2 Waiver of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUBSCRIPTION AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS REVENUE, LOSS PROFITS, LOSS BUSINESS) WHETHER IN CONTRACT, IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) OR OTHERWISE RESULTING FROM ITS PERFORMANCE OR ANY FAILURE TO PERFORM UNDER THIS SUBSCRIPTION AGREEMENT (INCLUDING LOSS OF DATA OR LOSS OF ANTICIPATED PROFITS OR BENEFITS) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## **10. TERM AND TERMINATION**

10.1 Term. The term of a Subscription Plan shall commence on the date of execution of the first applicable Order and lasts until the termination or expiration of all License Terms under all applicable Orders executed hereunder (the "Term"). Bluescape shall provide Customer with written notice of any increases in the Fees for any Renewal Term at least sixty (60) days prior to the end of the then-current License Term. Fees for any Renewal term shall be in accordance with the then current GSA Schedule Pricelist.

10.2 Termination for Cause. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Bluescape shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

10.3 Effect of Termination. Upon the expiration or termination of this Agreement for any reason,

(a) Customer shall immediately cease all use of the Bluescape Service and the Additional Services and all licenses granted under this Subscription Agreement shall terminate. To the extent that Customer is using any solution except for a Bluescape hosted solution, Customer shall immediately delete any and all instances and related Bluescape code.

(b) Except with respect to termination by Subscriber for Bluescape's breach, within thirty (30) days of the invoice receipt date following such expiration or termination, Customer shall pay all outstanding amounts then due.

(c) In the event of termination, Bluescape shall refund to Subscriber any pre-paid Fees covering the remainder of the Term.

(d) Upon written request, each party shall return to the other party or, pursuant to the other party's written instructions, destroy, all materials in its possession or control containing Confidential Information of the other party;

(e) Unless specified otherwise, all Customer Data, as well as created or uploaded content, will be securely destroyed by Bluescape within 90 days of termination; and

(f) The following provisions shall survive: 4.3, 4.4, 5.2-5.4, 6, 7.2, 8, 9, 10.4 and 12.

## **11. FORCE MAJEURE**

Excusable delays shall be governed by FAR 552.212-4(f).

## **12. MISCELLANEOUS PROVISIONS**

12.1 General. This Agreement shall be construed in accordance with the Federal law of the United States, without reference to its conflict of law principles. The parties are independent contractors and nothing in this Subscription Agreement shall be construed as establishing a joint venture, partnership, employment or agency relationship between the parties. In the event that any provision of the Agreement shall be determined to be illegal or unenforceable, a modified provision or written agreement shall be substituted which carries out as nearly as possible the original intent of the parties, and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby. With respect to its subject matter, this Agreement (together with its Exhibits and all Orders, all of which are incorporated into this Agreement by reference) represents the parties' entire agreement and supersedes all prior agreements, understandings and representations, written or oral, between the parties. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns and may not be amended except by a writing signed by the duly authorized representatives of both parties. The failure of a party to require performance of any provision of this Agreement shall in no manner affect its right to enforce the provision, and no delay or failure by either party to exercise any right or remedy shall operate as a waiver thereof. Bluescape may assign or transfer any and all rights or obligations under this Agreement Party to a successor who acquires substantially all of its relevant assets or business at any time in accordance with the provisions set forth at FAR 42.1204. Except as expressed herein, you may not assign or transfer (whether by operation of law, merger, consolidation, change of control or otherwise) any rights or obligations under this Agreement without the prior written consent of Bluescape. This Agreement may be executed in one or more counterparts and by facsimile or other electronic transmission (including via email in "portable document format" or, in the case of Customer click through), each of which shall be deemed an original, but all of which shall constitute the same instrument. Notwithstanding anything else in the Agreement, As Bluescape's business evolves, we may change the non-material Terms. You can review the most current version of the Terms at any time by visiting this website. Any material revisions to the Terms must be agreed to in writing by both parties. If you use the Bluescape Service after the effective date of any changes, that use will constitute your acceptance of the non-materially revised terms and conditions.

12.2 Notices. You agree that Bluescape may provide you with notices regarding the Bluescape Service by email, post or postings on the website(s) related to the affected Bluescape Service, in our discretion, and that we may rely upon the contact information you have provided as being accurate, complete and current. Except where this Agreement specifically provide for use of a different means or address for notice, any notice hereunder to Bluescape must be delivered by email to [legal@bluescape.com](mailto:legal@bluescape.com). This email address may be updated as part of any update to this Agreement.

12.3 Conflict. To the extent of any conflict or inconsistency between this Subscription Agreement and any Exhibit, Order, or any other document related to the parties' obligations under this Agreement, the terms of this body of this Agreement shall govern unless otherwise expressly agreed by the parties in writing. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order) shall be incorporated into or form any part of this Subscription Agreement, and all such terms or conditions shall be null and void.

12.4 Interpretation. The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;" and the words "such as", "for example" "e.g." and any derivatives shall mean by way of example and the items that follow these words shall not be deemed an exhaustive list. The descriptive headings and labels of the articles, sections, and subsections of this Agreement are for convenience and reference only and shall not affect this Agreement's construction or interpretation.