



TERMS OF USE, EUROPE

Effective February 06, 2019

These terms and conditions of use, as well as any document expressly incorporated into these terms by reference, form part of a legal agreement between BlueBee Holding BV, a private limited company incorporated under the laws of the Netherlands, with registered offices at Laan van Zuid Hoorn 57, 2289 DC Rijswijk (the Netherlands), KvK 51859076, VAT NL850203090B01 (“We” or “Us”, as well as other derivatives thereof), and the customer as identified in the order form (“You”, as well as other derivatives thereof). These terms and conditions of use govern all access and use of the Services (as described below) by You.

We or You may hereafter be referred to individually as “Party”, or together as “Parties”.

If you have questions or comments about these terms and conditions of use, please contact Us at the following e-mail address: info@bluebee.com.

1. APPLICATION

You enter into this Agreement by 1) clicking a box indicating acceptance when it is presented to you, 2) accessing or using any part of the Services, 3) placing an order by means of any form of acceptance of an order form. If you contract on behalf of another person or entity, You warrant that You have the authority to bind that person or entity, have read these terms and conditions of use and agree on behalf of that person or entity to these terms and conditions of use.

2. THE SERVICE

The Services consist of the following (i) the access to and use of the BlueBee Platform for accelerated genomics analysis by means of analysis pipelines that are preconfigured or that You may configure, (ii) the BlueBee Service Connector and/or the BlueBee API’s that interface between the BlueBee Platform and Your environment, (iii) any additional service agreed in the relevant order form.

The BlueBee Platform is hosted on servers that are managed by Us. Except if a specific country or regional restriction has been agreed in the order form, these servers may be located in any country of the European Economic Area. You may access and use the Service, but you have no right to receive a copy of the object code or source code of any software contained therein.

For the avoidance of doubt and unless explicitly agreed otherwise, all of Our obligations and terms are obligations to use reasonable efforts.

The Services may contain links to external sites and/or content. You agree that We are not liable in any manner for such sites and/or content. Any link to third party sites, contents, services or tools may not be construed as an approval or endorsement of such third party sites, contents, services or tools.

3. FEES AND PAYMENT

The fees are determined in the order form. Fees may be one-time fees, usage based fees and/or recurring fees, with or without minimum volume commitment, as the case may be. Unless agreed otherwise in the order form, (i) one-time fees are payable in advance, upon acceptance of the order form by You and (ii) usage based fees and recurring fees are payable monthly in arrears. If You commit to a minimum volume commitment and you fail to reach such minimum volume, You irrevocably agree to pay the fees relates to such minimum volume. All fees are non-refundable.

Fees do not include taxes. You are responsible for all taxes in relation to Our Services and their corresponding fees. You consent to receive electronic invoices.

Fees are payable within 30 days following the invoice date. Any undisputed amount that remains unpaid will automatically accrue a late payment interest in accordance with the provisions of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.

We may at any time decide to increase the fees unilaterally. The price increase shall be notified in writing and shall apply as of the month following the month in which the notice was given, provided however that (i) if the notice period is shorter than fourteen (14) days, the fee increase shall apply as of the second month following the month in which the notice was given and (ii) You shall be entitled to terminate the agreement within the aforementioned period, with effect upon expiry of that period, free of any charge by simple written notice.

Non-payment of the Services (or any portion thereof), constitutes a serious breach. In such case, We shall be entitled to suspend the Services (or any portion thereof) without prior notice. We shall resume the performance of the Services (or such relevant portion thereof) as soon as all fees due (including late payment interests, if any, are paid).

4. YOUR OBLIGATIONS

To be able to use the Service, You have to create one or more user accounts for persons that are authorized to access and use the BlueBee Platform (“Authorized User”). You will make reasonable efforts to prevent unauthorized access to, or use of, the Service. You and Your Authorized Users are responsible for keeping the login credentials confidential and for any unauthorized use made of these login credentials. We are not liable for any failure of You to keep the login credentials confidential. You shall block immediately any compromised login credentials and inform Us immediately thereof.

You shall not, and You shall make reasonable efforts to prevent third parties to:

- make unauthorized use of the Services.
- transfer to any other person any of its rights to use the Services;
- sell, rent or lease the Services or otherwise use the Service under a service desk or similar arrangement;
- make the Services available to anyone who is not an Authorized User;
- create any derivative works based upon the Service or Service Documentation;
- translate, modify, adapt, enhance, decompile, disassemble or reverse engineer the Service and/or the underlying software or otherwise determine or attempt to determine source code or protocols from the executable code of the software;
- extract ideas, algorithms, procedures, workflows or hierarchies from the Service or otherwise use the Service for the purpose of creating another product or service.
- access the Services in order to build a competitive solution or to assist someone else to build a competitive solution.

5. GENOMIC DATA

5.1. You are solely responsible for the content and accuracy of the genomic data You provide to Us (“Genomic Data”). You must provide all Genomic Data for use in the Services by means of the upload services supported by BlueBee (e.g. the BlueBee Service Connector, the BlueBee API, ...).

5.2. You warrant that the Genomic Data is provided in accordance with all provisions of applicable law and regulations, including any laws and regulations in relation to the processing of personal data. Furthermore, you warrant that the provision of Services in relation to the Genomic Data, as agreed between us, does not violate any provision of applicable law and regulation.

6. DATA PROTECTION AND PROCESSING OF GENOMIC DATA

6.1. GENOMIC DATA

To the extent that the Genomic Data is personal data within the meaning of Regulation 2016/679/EU (“GDPR”), You are controller or, if you process the Genomic Data on behalf of Your client(s), You are processor in relation to such Genomic Data. You shall process such data in compliance with all applicable laws and regulations in relation to privacy and data protection. You shall pseudonymise all Genomic Data that qualifies as personal data.

To the extent that the Genomic Data is personal data within the meaning of Regulation 2016/679/EU, We are Your processor or, as the case may be, sub-processor and We shall comply with the principles and relevant provisions of the applicable EU laws and regulations in relation to the processing of personal data as data processor.

Our respective rights and obligations in relation to Our data processing activities are described in a separate [data processing addendum](https://www.bluebee.com/dpa/) at <https://www.bluebee.com/dpa/>. The data processing addendum forms an integral part hereof.

Notwithstanding the above, We shall have the right to process Genomic Data to generate aggregated statistical data for our own use, including (but not limited to) statistical and research purposes and product improvement. In relation to Genomic Data that qualifies as personal data, such processing is further described in Our privacy statement at [Privacy Statement](https://www.bluebee.com/privacy-policy/) <https://www.bluebee.com/privacy-policy/>.

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6.2. CLIENT DATA

For the delivery of the Services, We require some information in relation to You and Your Authorized Users (“Client Data”). Our processing of the Client Data is described in Our privacy statement.

7. CONFIDENTIALITY

Each Party shall not disclose and shall keep secret all confidential information which it receives from the other Party. Confidential information shall at any rate include the Genomic Data. Each Party shall only use such confidential information for the purposes of their contractual relationship with each other.

Confidential information does not include information that:

- is or later becomes, generally known to the public (other than by breach of any agreement or undertaking of confidentiality);
- is lawfully obtained free from confidentiality constraints from any third party who has lawfully obtained such information free from confidentiality constraints;
- was obtained by the disclosing Party without the breach of this confidentiality clause;
- was developed by employees or agents of the recipient independently of and without any reference to any confidential information received from the disclosing party or other information that disclosing party has disclosed in confidence of any third party.

The obligation of confidentiality does not apply when the disclosure is required or authorized pursuant to any applicable statute, law, rule or regulation of any governmental or regulatory authority or following any judicial order.

The confidentiality obligations shall continue for a duration of seven (7) years following termination or expiry of the contractual relationship between us.

We may rely on various third-party service providers and contractors to provide services that support the Services and actions of, but not limited to: maintenance, payment processing and other services of an administrative nature. Such third-parties may have/be provided with access to personal information for the purpose of performing the service for which they have been engaged. We warrant that these third parties shall be subject to confidentiality obligations that are substantially similar to those set out in these terms and conditions of use.

8. INTELLECTUAL PROPERTY RIGHTS

Except as expressly stated otherwise, each Party remains owner of his intellectual property rights and such Party does not grant the other Party, implied or otherwise, a license to the other Party's intellectual property. If You provide Us with tools or materials in the context of Our Service provisioning, you shall remain the owner of such tools and materials. You provide Us with a limited, non-exclusive, non-transferable license to use such tools and materials in the context of the provision of the Services. We may also make such tools and materials available to third parties for use by such third parties, to the extent necessary or useful for the provision of the Services.

If You provide suggestions, improvements or feedback in relation to the Services, in any form, We have the right to use these for any purpose free of any charge. You assign to use all rights and title to such suggestions, improvements and feedback to the largest extent possible, including all current of future forms of exploitation. To the extent permitted by law, You waive or renounce Your right to exercise Your moral rights in any such suggestions, improvements and feedback.

9. CUSTOMER RESPONSIBILITIES

You acknowledge and accept that the Services merely assist You in Your own activities. You therefore accept sole responsibility for the access to and use of the Services, any related material/services and any of the effects/results thereof in relation to the Genomic Data. You acknowledge and agree that the processing of Genomic Data by means of the Services occurs in accordance with generally accepted practices and that We cannot guarantee, in the current of state of research and technology, that such processing shall be entirely free of errors or issues.

You are solely responsible for having a high speed Internet connection, and hardware and software that is compatible with the technical requirements of the Services, as may be communicated or made available from time to time.

10. WARRANTIES, LIABILITY AND INDEMNIFICATION

10.1. OUR WARRANTIES

We warrant that: (i) the Services will function substantially as described in the documentation; and (ii) We have the right to provide the Services to You. The remedies set out in this Section constitute Your sole remedies for non-conformity, any breach or infringement and third party claims.

- 1) If the Services do not function substantially in accordance with the documentation and in case this nonconformity was confirmed by a final court decision, We shall, at Our option, either make commercially reasonable efforts to (i) modify the Services to conform to the documentation; or (ii) provide a workaround solution that will reasonably meet Your requirements. If neither of these options is commercially feasible, either Party may terminate the contractual relationship, in which case and unless agreed otherwise no pre-paid fees shall be refunded.
- 2) If the normal operation, possession or use of the Services by You is found to infringe any third party intellectual property right and in case this infringement was confirmed by a final court decision, or in any case when We believe that this infringement is likely, We shall at Our option either (i) make commercially reasonable efforts to obtain a license from such third party for Your benefit; (ii) make commercially reasonable efforts to modify the Services so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the contractual relationship, in which case and unless agreed otherwise no pre-paid fees shall be refunded.
- 3) However, We have no warranty obligations with respect to:
 - I. software that has been modified by You or any third party, unless the modification has been explicitly approved in writing by Us;
 - II. problems in the Services caused by any third party software or hardware, by accidental damage or by other matters beyond Our reasonable control.
- 4) Any indemnification by Us is subject to Your prompt prior written notice of the claim for which indemnification by Us is justified under these terms and conditions of use.
- 5) Parties will cooperate in the course of the defense of any claim, suit or demand. However, We may at Our sole discretion assume the sole defense and control of any claim against You asserted by a third party. This includes the settlement of this claim on Your behalf.
- 6) All claims under this provision must be made within two (2) years after the termination or expiry of this contractual relationship.

To the fullest extent permitted by law, We disclaim all other warranties with respect to the Services, whether express or implied.

Whenever We provide you with free Services (e.g. in the context of a trial), such free Services are provided “as is” and, to the fullest extent permitted by law, We disclaim all warranties and liabilities in relation thereto.

You agree that the Services make use of a series of third-party tools, which may be chosen or imposed by You. If such tools are developed by third parties, such tools are provided subject to the end user conditions and warranties provided by such third parties. Although We have used reasonable care in the selection of such third-party tools, to the largest extent permitted by law, We do not accept liability for any errors or issues resulting from the use of such third-party tools in the context of Our Services, nor do We warrant the uninterrupted or error-free use of such third-party tools. By using such third party tools, You consent to such end user (license) conditions. To the largest extent permitted by law, We do not warrant that any documentation provided in relation to such third party tools is accurate, complete, reliable, current or error-free and You accept that We are not liable therefor. You acknowledge that you are liable for any use of or reliance upon such third party tools and/or the results they generate.

10.2. YOUR WARRANTIES

You represent and warrant that Your use of the Service:

- 1) complies with all applicable laws and regulations;
- 2) will not violate the terms of these terms and conditions of use and expressly incorporated documents;
- 3) will not circumvent or render ineffective Our technological and other measures to protect and control the Services and, in particular, the BlueBee Platform.

You warrant that You have obtained all consents, permits, waivers, and governmental or regulatory approvals required, necessary or appropriate for the use of the Services in the manner contemplated in this Agreement.

You shall at Our first request, defend, indemnify and hold Us harmless against any third party claim brought against Us in connection with any breach by You of any of the clauses under these terms and conditions of use.

10.3. LIMITATION OF LIABILITY

We are not liable to You for indirect damages, including but not limited to loss of profit, loss of business opportunities, loss of use or data, loss of personnel, loss of business or any delays of whatever nature or interruption of business, even if that damage was reasonably foreseeable or if You have been advised of the possibility thereof.

We shall indemnify You only for direct damages. To the maximum extent permitted by law, Our liability for direct damages is in any case limited to the fees paid and payable by You to Us, during a period of twelve (12) months immediately preceding the claim that gave rise to liability. To the maximum extent permitted by law, unless explicitly agreed otherwise in writing in the order form, Our aggregate liability shall never exceed 50.000 EUR.

Notwithstanding anything to the contrary in this Agreement, no limitations of liability apply in case of damages resulting from fraud, wilful intent, and in any other case prohibited by law.

11. TERMINATION AND RETRANSITION

The duration of our contractual relationship shall be determined in the order form.

Upon termination or expiry, Your right to access and use the Services shall immediately cease.

If the contractual relationship has an indefinite duration, each Party may terminate the contractual arrangement for any reason by registered letter with three (3) months' notice. If the contractual relationship has a definite duration, You may not cancel the order form.

In "pay as you use" arrangements, We shall be entitled to terminate the agreement with immediate effect, if you haven't use the Service for more than three (3) months.

Each Party may terminate the contractual arrangement with immediate effect by written notice if the other Party:

- is in serious breach
- is in breach, if this breach remains uncured at the end of a thirty (30) days' notice period.
- ceases his profession or business or if there is a threat of cessation, or in case of bankruptcy or evident insolvency or general cessation of payment.

We may terminate the contractual arrangement, wholly or partly, by written notice with immediate effect in case:

- you commit a breach of any of Your obligations, irrespective if they were remedied or not
- the control of Your ownership directly or indirectly changes
- a force majeure event lasting longer than thirty (30) days.

Termination has no effect on clauses that are explicitly or implicitly intended to stay in force after termination of this Agreement, this includes but is not limited to clauses 6, 7 and 8.

12. MISCELLANEOUS

GOVERNING LAW AND JURISDICTION

The contractual relationship shall be governed by Dutch law, with the exclusion of the UN Convention on the International Sale of Goods (CISG). All disputes will be brought exclusively before the competent courts of Amsterdam (the Netherlands).

PUBLICITY

We may list You as a reference on Our website and in Our marketing materials.

SEVERABILITY AND WAIVER

In the event that any provision of these terms (or any portion thereof) is illegal, invalid or otherwise unenforceable, this provision will be replaced with a provision that is to the most possible extent consistent with the stated intention of the Parties and fully complies with the minimum requirements for legality, validity and enforceability.

No right or claim shall be deemed waived, unless there is the explicit consent thereto in writing and signed by the Party waiving this right or claim.

ASSIGNMENT

You may not assign the agreement to any third party without Our prior written consent (which shall not be unreasonably withheld). We will have the right to assign the agreement to an affiliate

or another third party without Your written consent. We are entitled to subcontract any part of the Services.

ENTIRE AGREEMENT

Except as expressly agreed otherwise in writing, the Order Form and these terms, including any document expressly incorporated into these terms by reference, constitute the entire agreement between the Parties and supersede all prior agreements, written or oral, concerning the subject matter of the Order Form.

FORCE MAJEURE

We shall not be liable for any shortcoming that results from any event that is beyond Our reasonable control.