



TERMS OF USE, NORTH AMERICA

Effective February 06, 2019

<https://www.bluebee.com/privacy-policy/privacy-policy-north-america/>

This Agreement (as defined below) forms part of a legal agreement between BlueBee Corp., a Delaware corporation, with registered offices at 951 Mariners Island Blvd, Suite 300 San Mateo, CA, 94404, USA (“We”, “Our” 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, Our Privacy Policy (“Privacy Policy”), any order form executed by or on behalf of You, and any documents expressly referenced or attached therein (together, “the Agreement”) 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.

If You are a “covered entity” or “business associate” under the Health Insurance Portability and Accountability Act Administrative Simplification Provisions and related regulations at 45 CFR Parts 160, 162 and 164 (“HIPAA”) or similar state law, the Services are designed so that We will not access, collect, receive, use, disclose or maintain Protected Health Information (as defined in HIPAA) (“PHI”) on your behalf. If You wish to include identifying information tied to the Genomic Data (as hereinafter defined) or otherwise upload, store or transfer to Us PHI, You should first contact Us to enter into a Business Associate Agreement (“BAA”). Absent such agreement, You agree and acknowledge that You will not provide us any such PHI and that uploading, storing, or transferring any PHI using the Service without executing a separate BAA and any other necessary agreements is strictly prohibited under this Agreement.

Notwithstanding the foregoing, You further agree to indemnify and hold harmless BlueBee Corp. of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys’ fees and costs, arising out of or relating to the your uploading, storing, or transferring of PHI using the Services.

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 commencing on the date the original payment was due in an amount equal to equal to one percent (1%) per month (or the maximum allowed by law, whichever is less) of the amount of any unpaid amounts.

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 expiration of that period, free of any charge by written notice.

Non-payment of the Services (or any portion thereof), constitutes a material breach of this Agreement. In such case, We shall be entitled to suspend or terminate the Services (or any portion thereof) without prior notice.

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 alone are liable for the actions of Your Authorized Users or from Your failure to keep the login credentials confidential.

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.

You understand and agree that you will not provide to Us any “Protected Health Information” as that term is defined in HIPAA, or other personally identifiable information such as a name, address, date, identifiable name or other information that could be used, alone or in combination with other information, to identify a particular individual.

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, and will be used, 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.

5.3 You warrant and agree that all disclosures and uses of Genomic Data You provide to Us is provided in compliance with all applicable law including, without limitation, the Genetic Information Nondiscrimination Act of 2008 and related and similar laws, rules and regulations, and that none of the Genomic Data shall be used for underwriting, insurance, employment, benefits or other purposes except in compliance with all applicable laws and regulations.

6. PRIVACY POLICY

Your privacy is important to Us, and We know that you care about how Your information is stored, used, and shared. Please review our Privacy Policy at ([“Privacy Policy”](#)) to review how We use your information.

7. CONFIDENTIALITY

Each Party shall not disclose and shall keep secret all confidential information which it receives from the other Party. Each Party will use the same degree of care to protect the other Party’s confidential information as it uses to protect its own information of like nature, but in no circumstances less than reasonable care. 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 except as expressly permitted under this Agreement or as expressly authorized in writing by the disclosing Party.

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. Confidential information may be disclosed by a Party as permitted by the Privacy Policy.

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

8. INTELLECTUAL PROPERTY RIGHTS

All right, title and interest in and to the Services and all modifications, enhancements and derivatives of the Services, and all intellectual property contained in any of the foregoing, shall be owned by Us except as expressly stated otherwise. Each Party remains owner of his or her 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. All use rights in and to the Services not expressly granted herein are reserved to Us.

As between You and Us, You own and will continue to own all right, title and interest in and to Your data including, without limitation, the Genomic Data You provide to Us. You grant Us the limited right to view, modify, collect and use your data, solely for the purpose of providing the Services.

9. WARRANTIES AND LIABILITY

9.1. 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 and
 - 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. 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.
5. 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, indemnification obligations and all other 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 use 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 therefore. You acknowledge that you are liable for any use of or reliance upon such third party tools and/or the results they generate. We do not accept and have no liability for your use of third-party tools or services that infringe, misappropriate, or are alleged to infringe or

misappropriate any third-party patent, trademark, copyright, trade secret or other intellectual property right.

9.2. YOUR WARRANTIES

You represent and warrant that Your use of the Service at all times:

1. complies with all applicable laws and regulations;
2. will not violate the terms of this Agreement;
3. will not circumvent or render ineffective Our technological and other measures to protect and control the Services and, in particular, the BlueBee Platform; and
4. will not directly or indirectly provide Us with any personally identifiable information or personal health information and that you shall indemnify us to the fullest extent for any liability that results from your intentional or inadvertent disclosure of such information.

9.3. DISCLAIMER OF WARRANTIES

You acknowledge and agree that the Services merely assist You in Your own activities; and You 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. The processing of Genomic Data by means of the Services occurs in accordance with generally accepted practices and We do not guarantee, in the current of state of research and technology, that such processing shall be entirely free of errors or issues.

9.4 LIMITATION OF LIABILITY AND DAMAGES WAIVER

WE AND OUR AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS SHALL NOT HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR CONSEQUENTIAL; EXEMPLARY; SPECIAL; INCIDENTAL; PUNITIVE DAMAGES; LOSS OF PROFITS OR REVENUES; LOSS DATA; EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

OUR TOTAL LIABILITY PURSUANT TO THIS AGREEMENT IS LIMITED IN THE AGGREGATE TO THE FEES ACTUALLY PAID BY YOU DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT OR PER AFFILIATE.

9.5. INDEMNIFICATION

You agree to defend at your own expense and hold Us harmless, and Our respective affiliates, subsidiaries, partners, officers, directors, employees, agents, successors and assigns from any and all third party claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising from or relating to this Agreement.

10. TERMINATION

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

Upon termination or expiration, Your right to access and use the Services shall immediately cease. Upon termination or expiration, We will provide You with limited access for thirty (30) days to download your data.

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 this Agreement with immediate effect, if you have not used the Service for more than three (3) months.

Each Party may terminate this Agreement with immediate effect by written notice if :

- the other Party is in material breach, if this breach remains uncured at the end of a thirty (30) days' notice period or
- the other Party 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; or
- 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 7 8.

11. MISCELLANEOUS

11.1. GOVERNING LAW AND JURISDICTION

Any dispute arising under this Agreement shall be governed by the substantive laws of the State of Massachusetts, without respect to its, or any other state's, conflict of laws principles. Any claim or dispute between You and Us that arises in whole or in part from the Services shall be decided exclusively by a court of competent jurisdiction located in Suffolk County, Massachusetts and You hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves.

11.2. PUBLICITY

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

11.3. 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 and the remainder of the Agreement shall remain in full force and effect notwithstanding.

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.

11.4. 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.

11.5. ENTIRE AGREEMENT

Except as expressly agreed otherwise in writing, the Order Form and this Agreement, 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.

11.6. FORCE MAJEURE

No Party shall be liable for the failure to perform or delay in the performance of its obligations under this Agreement to the extent such failure or delay is caused by or results from an event caused by a circumstance beyond a Party's reasonable control and that could not have been prevented or avoided by the exercise of all due diligence. We shall not be liable to You for any costs or expenses incurred as a result of any such event.