Google Cloud Platform Marketplace
Master Services Agreement

BY PURCHASING IN THE MARKETPLACE (DEFINED BELOW) AND ACCESSING AND USING THE BLUECORE SERVICES (DEFINED BELOW), YOU ACKNOWLEDGE AND AGREE TO COMPLY WITH THE TERMS OF THIS AGREEMENT DEFINED BELOW). BLUECORE MAY AMEND THIS AGREEMENT AT ANY TIME BY POSTING AN UPDATED VERSION OF THIS AGREEMENT TO WWW.BLUECORE.COM/LEGAL. YOUR CONTINUED USE OF THE BLUECORE SERVICES SUBSEQUENT TO ANY SUCH UPDATES BEING POSTED CONSTITUTES YOUR EXPLICIT CONSENT TO SUCH UPDATES. IF YOU DO NOT AGREE TO SUCH UPDATES, THEN YOU MUST IMMEDIATELY CEASE USING THE BLUECORE SERVICES PURCHASED IN THE GOOGLE MARKETPLACE.

1.   DEFINITIONS

"**Agreement**" means this Google Cloud Platform Marketplace Master Services Agreement governing the purchase of the Bluecore Services when purchased in the Marketplace.

"**Affiliate**" means an entity which is directly or indirectly controlling, controlled by, or under common control with a Party.

"**Bluecore**" means Bluecore, Inc., a Delaware corporation, with offices at 222 Broadway, 16th Fl, New York, NY 10038.

"**Bluecore Content**" means the (i) Services and related user interface; (ii) template workflow tools provided or made available by Bluecore; (iii) core technology making up the Platform; and (iv) aggregated and anonymized statistics about the effectiveness of campaigns for Bluecore customers using the Platform.

"**Customer**" means the entity entering using the Bluecore Services purchased in the Marketplace, pursuant to this Agreement.

"**Customer Data**" means all data collected by the Services from the Customer Sites.

"**Customer Sites**" means the websites, mobile sites, and mobile applications on which Customer is authorized to use the Services, including the look and feel and the underlying technology related thereto.

"**Effective Date**" means the date Customer first accesses the Services.

"**IP**" means, in the case of Bluecore, the Bluecore Marks, the Bluecore Content, and the Services; and, in the case of Customer, the Customer Marks, the Customer Data, and the Customer Sites.

"**Marks**" means a Party's trade names, trademarks, service marks, logos or other commercial or product designations.

"**Marketplace**" means the Google Cloud Platform Marketplace where Customer may purchase Bluecore Services.

"**Party**" means each of Bluecore and Customer.

"**Parties**" means, collectively, Bluecore and Customer.

"**Platform**", means Bluecore's proprietary marketing software platform. Platform includes any Updates made during the Term.

"**Professional Services**" means additional services other than the Platform that Customer purchases and Bluecore provides to Customer pursuant to Customer's purchase in the Marketplace, including any visual designs or concepts prepared by Bluecore for Customer.

"**Services**" means the Platform and Professional Services.

"**SLA**" means Bluecore's Service Level Agreement, located at www.bluecore.com/legal.

"**Updates**" means modifications, updates, and changes made by Bluecore to the Platform which Bluecore makes generally available to its customers at no additional fee. Updates exclude new features, functions and capabilities which are offered for an additional fee through the Marketplace from time to time.

2.   SERVICES; OWNERSHIP; IP; THIRD-PARTY PRODUCTS; SLA; RESTRICTIONS

2.1   During the Term, Bluecore will provide to Customer the Services as further described in Exhibit A, as the quantities of such are purchased by Customer in the Marketplace. Any change in the Services to be provided will be made through additional purchases in the Marketplace.

2.2   As between Bluecore and Customer, Customer owns all right, title and interest in and to the Customer IP. As between Customer and Bluecore, Bluecore owns all right, title, and interest in and to the Bluecore IP, as well as any suggestions or feedback provided by Customer to Bluecore with respect to the Services. Nothing in this Agreement will confer in either Party any right of ownership in the other Party's IP.

2.3   Subject to the terms and conditions of this Agreement, (a) Bluecore hereby grants to Customer a non-exclusive, non-transferable license to use the Bluecore Content delivered to Customer and to access and use the Services during the Term as permitted by this Agreement; and (b) Customer hereby grants to Bluecore a non-exclusive non-transferable license to use the Customer Data during the Term solely as necessary to provide the Services to Customer pursuant to this Agreement. Each of Customer and Bluecore will not take any action that could reasonably be anticipated to harm, prejudice or otherwise damage the reputation and goodwill associated with the other Party's Marks. Each Party's use of the other Party's Marks will inure to the benefit of such other Party. Notwithstanding anything to the contrary in this Agreement, Customer hereby grants Bluecore a perpetual, royalty-free, right and license to use aggregated Customer Data, which shall not identify Customer, Customer's customers, or any person or entity, for all legally permissible purposes, including without limitation benchmarking and analytics.

2.4   Bluecore may make available to Customer and/or Customer's customer(s), and/or the Services may integrate with, certain third-party applications, services or products, for use in connection with the Services ("**Third-Party Products**"). Where the providers of such Third-Party Products require Customer to have a separate agreement directly with such provider, Customer's use of such Third-Party Products is subject to that separate agreement between Customer and the provider of such Third-Party Products. Any exchange of information (including any entitlement to retrieve Customer Data generated through such Third-Party Products) is between Customer and the provider of such Third-Party Products. Bluecore makes no warranties of any kind and assumes no liability whatsoever for Customer's or Customer's customer(s)' use of such Third-Party Products. Upon termination of this Agreement, Bluecore will use commercially reasonable efforts to assist Customer, at Customer's request, in retrieving Customer Data from such Third-Party Products. Alternatively, where Customer is not required to execute a separate agreement for a Third-Party Product with the provider of such Third-Party Product, Customer's use of such Third-Party Products shall be deemed part of the Services and shall be subject to this Agreement.

2.5   The SLA, in its current version at the Effective Date of this Agreement, shall be incorporated into this Agreement, in its entirety, and Bluecore will provide the Platform in accordance with the SLA.

2.6   Customer will not (i) misappropriate or infringe Bluecore IP; (ii) reverse engineer, decompile, disassemble, disclose, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Platform; (iii) modify, translate, or create derivative works based on the Platform; (iv) use the Services for purposes of a third party or otherwise for the benefit of a third party; or (v) use or view the Platform for the purposes of developing a product or service commercially competitive to the Services (collectively, the "**Restrictions**").

3.   FEES; TAXES

3.1   Invoicing for the amounts due for Bluecore Services purchased in the Marketplace (the "**Fees**") is handled by Google and occurs monthly in arrears. Any overages will be addressed pursuant to the terms between the parties in the Marketplace.

4.   TERM; TERMINATION

4.1   This Agreement will begin on the Effective Date and will continue for term length of the Bluecore Services purchased by Customer in the Marketplace, unless earlier terminated in accordance with the provisions of this Agreement (the "**Term**").

4.2   This Agreement, may be terminated immediately by the non-breaching Party, if the other Party has materially breached its obligations hereunder and such breach is not cured within thirty (30) days after written notice from the non-breaching Party to the breaching Party identifying the nature of said breach.

4.3   Upon termination of this Agreement: (i) Customer will pay all Fees due hereunder through the termination date; (ii) upon written request to Bluecore within fifteen (15) days after such termination, Bluecore will provide to Customer any Customer Data in its possession, encrypted using industry-standard protocols, via a secure electronic storage service managed by Bluecore, and Customer must download the Customer Data within thirty (30) days thereafter; (iii) within thirty (30) days, each Party will return any other Confidential Information of the other Party and will erase or destroy any remaining electronic versions of Confidential Information of the other Party then in its possession, provided however that nothing herein will require such Party to delete or purge any records in backup or archival systems kept in the normal course of business; and (iv) Sections 3, 5.4, 5.5, 6, and 7, and any other provisions which by their nature would reasonably be considered to survive, will survive the termination

of this Agreement. Notwithstanding anything to the contrary, in the event (y) Customer fails to request a copy of the Customer Data within the fifteen (15) day period, or (z) Customer requests a copy of the Customer Data but fails to download such Customer Data within the thirty (30) day period, then Bluecore shall have no obligation to continue maintaining Customer Data.

5. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; LIMITATION OF LIABILITY

5.1   Each Party represents and warrants to the other Party that: (a) such Party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (b) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (c) in connection with this Agreement and its activities hereunder, it will comply with all applicable laws, rules, and regulations.

5.2   Bluecore further represents and warrants that: (a) it will perform all Services in a professional and workmanlike manner consistent with industry standards; (b) the Services will not violate applicable laws, rules, or regulations; (c) the Services and functionality will comply with the terms of this Agreement and will not be materially degraded during the Term; and (d) materials provided to Customer by Bluecore will, at the time of delivery to Customer are free of any computer "virus" or other similar harmful, malicious, or hidden program, code, or data.

5.3   EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED "AS IS" AND NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICES WILL BE TIMELY, UNINTERRUPTED, OR ERROR-FREE.

5.4   Bluecore shall indemnify, defend, and hold harmless Customer, and its Affiliates and its and their respective officers, directors, and employees, from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees ("**Losses**"), arising out of any third party claim ("**Claim**") that the Bluecore IP when used by Customer as permitted hereunder, directly infringes a valid third-party intellectual property right. In the event that the Bluecore IP is enjoined, or in Bluecore's reasonable opinion are likely to be enjoined, Bluecore will elect to do one of the following, in its sole discretion: (i) procure for Customer the right to continue using the Bluecore IP; (ii) modify the Bluecore IP to make it non-infringing but functionally equivalent, or (iii) terminate this Agreement and provide a pro-rata refund of any prepaid Fees for Services not yet rendered as of the date of termination. Bluecore shall have no obligation to indemnify a Claim described herein where the infringement arises out of (y) Customer's use of the Bluecore IP other than as permitted hereunder, or (z) Customer's use of the Bluecore IP in connection with other products and services not provided by, or consented to, by Bluecore, where the alleged infringement results from such combination. The provisions of this Section 5.4 state Bluecore's sole liability and Customer's sole and exclusive remedy in the event of a Claim described herein.

5.5   Customer shall indemnify, defend, and hold harmless Bluecore, and its Affiliates and its and their respective officers, directors, and employees, from and against any and all Losses arising out of any Claim that Customer Data (i) was collected by Customer in violation of any applicable laws, rules, or regulations, or (ii) violates any third-party intellectual property rights.

5.6   The indemnification obligations in Sections 5.4 and 5.5 are conditioned upon: (i) prompt notice by the party seeking the indemnity (the "**Indemnitee**") to the indemnifying party (the "**Indemnitor**") of any claim for which Customer seeks indemnification; (ii) complete control of the defense and settlement of the claim by the Indemnitor including in the selection of counsel; and (iii) reasonable cooperation by the Indemnitee in the defense as the Indemnitor may request.

5.6   EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTIONS 5.4 AND 5.5, CUSTOMER'S BREACH OF THE RESTRICTIONS, AND/OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (COLLECTIVELY, THE "**EXCLUSIONS**"), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS) ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, EXCEPT WITH RESPECT TO THE EXCLUSIONS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT FOR ANY CLAIMS (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER TO BLUECORE DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

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6. CONFIDENTIALITY; DATA SECURITY; DATA PROTECTION

6.1 All data and information of either Party ("**Discloser**") that is received or otherwise accessed by the other Party ("**Recipient**") and is (i) identified or marked as confidential; or (ii) given the nature of the information and the circumstances of the disclosure a reasonable person would believe the information to be confidential, shall be considered the confidential information of the Discloser ("**Confidential Information**"). Confidential Information shall not include information that (w) is or becomes public other than as a result of a disclosure by the Recipient; (x) was already in the Recipient's possession or was available to the Recipient on a non-confidential basis before disclosure; (y) is received by the Recipient from a third party that is not bound by separate confidentiality obligations with the Discloser; or (z) is independently developed by the Recipient without using the Confidential Information. For the avoidance of doubt, Bluecore Confidential Information includes all Bluecore IP and Customer Confidential Information includes all Customer Data.

6.2 The Recipient shall maintain the Confidential Information in strict confidence, shall disclose the Confidential Information only to those individuals or entities who have a need-to-know such information and are under confidentiality obligations at least as restrictive as those found in this Agreement, and shall not use the Confidential Information for any purposes other than as expressly permitted in this Agreement. The Recipient shall, at all times, remain liable for the acts and omissions of the party to whom the Recipient discloses Confidential Information. In the event the Recipient is obligated to disclose the Confidential Information pursuant to a valid legal order, then prior to such disclosure, the Recipient shall (unless prohibited at law to do so) notify the Discloser, provide the Discloser with a meaningful opportunity to contest the order prior to the Recipient's disclosure, and take reasonable steps to limit the disclosure of Confidential Information to only that which is strictly necessary to comply with such legal order.

6.3 The obligations in this Section 6 shall survive any termination of this Agreement for a period of five (5) years.

6.4 Bluecore shall implement and maintain a written information security program that is reasonably designed to: (i) ensure the security, integrity and confidentiality of Confidential Information; (ii) protect against anticipated threats or hazards to the security or integrity of Confidential Information; and (iii) protect against unauthorized access to or use of Confidential Information. Such program shall contain physical, technical and administrative controls for the maintenance, transmittal and disposal of Confidential Information provided under this Agreement, as same are reasonable and appropriate given the type of Confidential Information received or anticipated to be received by Bluecore, and shall include regularly-scheduled data security risk assessments and adjustments. Except where prohibited or otherwise provided by law, (w) Bluecore shall inform Customer of any breach of Confidential Information (a "**Security Incident**") within twenty-four (24) hours of discovery; (x) provide daily updates to Customer; (y) within five (5) days of discovery, provide a detailed summary of the scope of the Security Incident; and (z) allow Customer, within Customer's sole discretion, to determine whether to publicly disclose the occurrence and circumstances of the Security Incident.

6.5 Bluecore's Data Processing Addendum, in its current version as of the Effective Date, located at www.bluecore.com/legal, is incorporated into and is subject to the terms of this Agreement (the "**DPA**").

7. MISCELLANEOUS

7.1 This Agreement will be governed by the laws of the State of New York, without resort to its conflict of law principles, and each Party irrevocably consents to the exclusive jurisdiction of the state or federal courts located in the New York, New York, over any suit, action, or proceeding arising out of or relating to this Agreement. Additionally, the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Parties unconditionally and irrevocably waive any right to trial by jury in any action, suit, or proceeding arising out of or relating to this Agreement.

7.2 The rights and obligations of either Party under this Agreement cannot, in whole or in part, be assigned without the other Party's prior written consent, which shall not be unreasonably withheld; provided, however, that either Party may assign or otherwise transfer this Agreement to (i) an Affiliate or (ii) in connection with a merger or sale of all or substantially all of such Party's assets. Any attempt to assign this Agreement other than as permitted herein will be void. This Agreement will bind and inure to the benefit of the respective successors and permitted assigns of Customer.

7.3 Bluecore may identify Customer as a Bluecore customer, and use Customer's logo, on Bluecore's website and in its

customer lists. Any other uses requires Customer's prior written consent in each instance.

7.4   All notices to be provided hereunder shall be sent by one Party certified mail, return receipt requested, to the other Party, at the address listed in applicable SOW. For Bluecore, notices shall be addressed to 222 Broadway, 16th Fl, New York, NY 10038, Attention: Legal Department. Notices may also be sent to Bluecore at legal@bluecore.com.

7.5   This Agreement, including any Exhibits hereto, and other documents referenced herein, including without limitation the SLA and the DPA, contains the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings (whether written or oral) concerning the subject matter hereof. No term or condition of this Agreement may be amended or waived except by mutual written agreement. The Parties are independent contractors, and nothing herein will be construed to create a joint venture, partnership, or the relationship of principal and agent between the Parties. This Agreement may be executed in multiple counterparts (including by electronic, facsimile or PDF execution), each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. If any provision of this Agreement is determined by a court or other authority having competent jurisdiction to be void, illegal or otherwise unenforceable: (i) that provision will be enforced to the maximum extent allowed so as to effect the intent of the Parties; and (ii) all other provisions of this Agreement will remain in full force and effect. To the extent there is a conflict between the terms of this Agreement and any SOW, the terms of the SOW shall control. If performance of any obligation under this Agreement or an SOW is prevented by any condition beyond the reasonable control of the affected Party (a "Force Majeure Event"), the Party so affected, upon giving prompt written notice to the other Party, will be excused from such performance to the extent of such prevention. The foregoing shall not relieve a Party from its obligation to use all commercially reasonable efforts to resume performance under this Agreement or SOW as soon as possible following the Force Majeure Event.

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EXHIBIT A

**As applicable, depending on Customer's purchase in the Marketplace

COMMUNICATE

"**Click**" means any instance where a recipient clicks on any link in Customer's email message, as captured and reported by Bluecore's email analytics dashboard, or mutually agreed upon reporting source.

"**Email Send**" means a personalized batch send that is delivered by Customer to an individual's email address.

"**Purchase Term**" means the term length during which Customer will receive the Bluecore Services through Customer's purchase in the Marketplace, or a time period as otherwise agreed upon in the Marketplace.

The allotted number of Clicks and the associated pricing will be determined within the quoting tool in the Marketplace.

Campaign Builder:

Bluecore Campaign Builder provides Customer the ability to send batched, personalized email campaigns to targeted audience segments based on selection criteria provided by Customer, as well as triggered email sends that react to user behaviors and catalog changes ("Triggered Email Sends").

Triggers for Triggered Email Sends include without limitation:

- Cart Abandonment
- Product Abandonment
- Search Abandonment
- Price Decrease
- New Arrivals
- Post Purchase

Audience Builder: Bluecore Audience Builder provides Customer the ability to create audience segments using combinations of user attributes and behaviors including email engagement and customer behaviors, as well as the product catalog.

Visual Template Editor: Bluecore Visual Template Editor provides Customer the ability to build responsive email templates using a drag-and-drop editor.

Campaign Analytics: Bluecore Campaign Analytics provides Customer an analytics dashboard that details aggregated analytics for email campaigns through the Bluecore Platform.

A/B Testing: Bluecore A/B Testing provides Customer the ability to test email campaigns for up to five (5) variants. A/B tests may be begun and concluded in real-time.

Product Recommendations: Bluecore Product Recommendations provides Customer collaborative-based and attribute-based product recommendation algorithms, making product recommendations unique for each of Customer's customers.

Customer 360: Bluecore Customer 360 provides Customer a timeline of all actions that a customer has taken on the Customer Site, including without limitation product views and purchases.

Audience Insights: Bluecore Audience Insights provides Customer a predictive analytics dashboard that surfaces retail-focused insights about any defined groups of customers.

Predictive Models: Bluecore Predictive Models provides Customer the ability to leverage the customer and product catalog data that Bluecore captures to analyze, cluster, and predict how Customer can more effectively engage its audiences. Predictive algorithms include without limitation:

- Predicted Customer Lifetime Value
- Life-Cycle Stage (Active, At-Risk, Lost, etc.)
- Likelihood to Convert
- Likelihood to Open/Click/Unsubscribe

- Discount Preferences
- Category Preferences

Offline Purchase Data Ingestion: Customer may set up a recurring data import into the Bluecore Platform containing transactions made offline (e.g. in a brick-and-mortar location) that are tied to a specific customer email address. To facilitate this ingestion, Customer must use the file formats specified by Bluecore.

Implementation: Customer is responsible for maintaining any javascript snippet or existing integration required by Bluecore to provide the Bluecore Services.

BLUECORE SITE™ CAPTURE: Leverages Bluecore's native onsite capabilities to provide Customer will the ability to create campaigns to grow its email lists and increase Customer Site conversions, while leveraging Bluecore Audiences to better target and personalize the experience of a customer on the Customer Site.

Capabilities include:

- Email capture
- Exit intent
- Cart abandonment
- Onsite messaging
- Bluecore Site™ Predictive Audience Targeting

MEDIA INTEGRATION: Enables Customer to sync Bluecore audiences to advertising platforms of Customer's choosing using email addresses identifiers. Customer's purchase of digital media is between Customer and the advertising platform(s) utilized, and is separate and apart from Bluecore. Customer may sync audiences to one or both of the below platforms:

- Facebook + Instagram
- Google Ads

CUSTOM MEDIA INTEGRATION: Provides Customer the ability to sync all Bluecore audiences to include one paid media channel (e.g. platforms such as Criteo, Pinterest, and Snapchat) vis secure transfer protocol (SFTP) using email addresses. Customer's purchase of digital media will go directly through the designated advertising platform(s), and will be separate and apart from Bluecore.

CUSTOMER SUCCESS: A Client Success Manager (CSM) will be responsible for overall health of Customer's Bluecore account and the business relationship. The CSM is the point of escalation for any issues for which Customer has not received a satisfactory resolution. The exact details of your Customer Success package will be as described in the quote generated through the Marketplace.

PLATFORM SUPPORT

Product Support Hours: 24x7x365

Product Support Scope: Troubleshooting of ongoing issues with campaigns and Customer's product catalog. Additionally, providing guidance on Customer-created campaigns.