

**bLoyal**  
**ON-LINE SUBSCRIPTION AGREEMENT**

**IMPORTANT – PLEASE READ CAREFULLY**

THIS ON-LINE SUBSCRIPTION AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU (THE "SUBSCRIBER") AND EVT SOLUTIONS, INC. ("EVT") AND GOVERNS YOUR USE OF THE bLOYAL ONLINE SERVICE (THE "SERVICE"). YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF THE SERVICE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "SUBSCRIBER", "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS YOU MAY NOT USE THE SERVICE.

1. **bLoyal™ Service.** These Terms and Conditions govern the use by the Subscriber of any Services ordered by Subscriber from EVT and set-forth in one or more "Order Forms". As part of the Service, EVT will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the evtsolutions.com or bLoyal.com websites incorporated by reference herein, including but not limited to EVT's privacy and security policies.

2. **Order Forms.** An "Order Form" is a form signed by the Subscriber that identifies the type and quantity of Services being ordered and associated fees. In the case of an online Order Form the signature may be an electronic signature by clicking on the "I Accept" button during the order process. An Order Form is effective when signed by the Subscriber and the Service has been setup by EVT and ready for use by the Subscriber.

3. **License Grant & Restrictions.** EVT hereby grants you a non-exclusive, non-transferrable, worldwide right to use the Service, solely for your own business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by EVT and its licensors.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

4. **Product Support.** bLoyal per incident support will be included with your bLoyal subscription at a rate of \$75/incident. A support incident is defined to be a SINGLE support issue and can be submitted by phone, online, or email as specified in the bLoyal Support Service Level Agreement ("SLA") (<http://support.bLoyal.com/Agreements/bLoyal-Support-SLA.pdf>). Enhanced support

plans are available for purchase and provide extended hours and enhanced response time. Details on the terms and conditions for each of the bLoyal support plans are described in the SLA. If Subscriber is not on a support plan then the support incident will be charged to the Subscriber's payment method on file for their bLoyal subscription when the incident is created.

**5. Changes to Services.** EVT may, at its sole discretion, modify, enhance and/or expand the features of a Service from time to time at no additional cost to Subscriber. EVT may also, from time to time, make available features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost ("Cost Feature"). If Subscriber elects to add the additional Cost Feature it may do so by contacting EVT directly at 1-877-869-1715 or online at [www.bLoyal.com](http://www.bLoyal.com).

**6. Fee Adjustments.** EVT may, upon at least thirty (30) days prior notice and effective at the end of the then-current Term (Initial or Renewal), adjust the fees paid by Subscriber for the Services, provided that Subscriber shall have the option, within fifteen (15) days of receiving such notice from EVT, to either (i) modify the type or quantity of Services utilized by Subscriber by a mutual written amendment between parties, or (ii) terminate the affected Service(s) upon written notice, either of which will become effective at the beginning of the next Renewal Term.

**7. Payment.** EVT charges and collects in advance for use of the Service. EVT will automatically debit to your account using ACH direct or credit card billing every month for monthly subscriptions or as otherwise mutually agreed upon and specified on the Order Form. The amount charged will be equal to the then-current monthly subscription amount for the upcoming month plus any applicable Usage fees accrued. Support incidents will be charged immediately upon creation of the incident unless the Subscriber is on a Gold or Silver support plan. A \$25 NSF fee will be applied for any returned transactions due to insufficient funds (NSF) or uncollected funds.

You will receive a monthly statement listing the Service Subscriptions invoiced along with any transaction fees applied. Your monthly statements will be available online in your account management area within your bLoyal account and can be emailed to you.

You agree to provide EVT with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and user Account Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, EVT reserves the right to terminate your access to the Service in addition to any other legal remedies.

If you believe your bill is incorrect, you must contact EVT in writing within 60 days of the statement date containing the amount in question to be eligible to receive an adjustment or credit.

**8. Non-Payment and Suspension.** In addition to any other rights granted to EVT herein, EVT reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less. Additionally, EVT is entitled to recover any reasonable sums expended in connection with the

collection of sums not paid when due, including reasonable attorney's fees. You will continue to be charged for Subscriptions and any applicable Usage fees during any period of suspension. If you or EVT initiates termination of this Agreement, you will be obligated to pay the balance due on your account.

**9. Term and Termination.**

**(a) Term of Orders.** The "Initial Term" of an Order will be for twelve (12) months, commencing on the date the Service has been setup and available for use by the Subscriber. Each Renewal Term will automatically begin at the end of the preceding Term and continue for twelve (12) months.

**(b) Termination of Orders.** Either party may terminate any Order at the end of any Term by providing the other party written notice of termination at least 30 days prior to the end of such term.

**(c) Term of Agreement.** This Agreement will commence on the date signed by the Subscriber (if in paper form) or when subscriber clicks "I Accept" (if presented online) and may terminate by written notice effective upon the termination of all Subscriber's Orders.

**(d) Termination for Breach.** Each party may terminate any Order(s) and/or this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within fifteen (15) days after written notice thereof from the terminating party.

**(e) Surviving Provisions.** The term of any right or license or proprietary rights granted to you under this Agreement shall run contemporaneously with this Agreement. In the event of termination or expiration of this Agreement for any reason, Sections 7, 8, 13, 14, 15, 16, 18, 19, 20, and 22 shall survive.

**10. Use of Subscriber Name.** Subscriber agrees that EVT may use subscriber's name and logo to identify Subscriber as a customer of EVT on EVT's website, and as part of a general list of EVT customers for use and reference in EVT corporate, promotional, and marketing materials. Subscribers agrees that EVT may issue a press release identifying Subscriber as an EVT customer and describing Subscriber's intended utilization, and the benefits the Subscriber expects to receive from use of the Service. The content of any press release identifying Subscriber as a customer of EVT will be subject to Subscriber's prior approval, which will not be unreasonably withheld.

**11. Subscriber Responsibilities.**

**(a) Account Name and Password.** You are responsible for all uses and activity occurring under your user Accounts and are responsible for maintaining the confidentiality of Account names and passwords; including additional user Accounts created. Subscriber agrees to immediately notify EVT of any unauthorized use of Subscriber's account of which Subscriber becomes aware or suspected breach of security. Subscriber also agrees not to impersonate another user account or provide false identity information to gain access to or use the Service.

**(b) Content and Use on Subscriber's Account.** Subscriber agrees that Subscriber is solely responsible for all activity, content and communications

that result from using the Subscriber's user Accounts. Subscriber agrees that Subscriber will not use the Services to send unsolicited email in violation of applicable law. Subscriber further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, and obscene, would violate the intellectual property right of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that would constitute a criminal offense, under any applicable law or regulation. Although EVT is not responsible for any such communications, EVT may suspend any such communications of which EVT is made aware of, at any time upon prompt notice to Subscriber. Subscriber agrees to indemnify, defend and hold harmless EVT from any and all third party claims, liability, damages and/or costs (included, but not limited to, attorney's fees) arising from the Subscriber's violation of this Section.

**12.Account Information and Data.** EVT does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not EVT, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and EVT shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), EVT will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. EVT reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and EVT shall have no obligation to maintain or forward any Customer Data.

**13.Intellectual Property Ownership.** EVT alone (and its licensors, where applicable) shall own all right, title, and interest, including all related Intellectual Property Rights, in and to the EVT Technology and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you and rights of ownership in or related to the Service, the EVT Technology or the Intellectual Property Rights owned by EVT. The bLoyal, bLoyal.com, and EVT Solutions name, the bLoyal logo, and the product names associated with the Service are trademarks of EVT or third parties, and no right or license is granted to use them.

**14.Third Party Interactions.** During the use of the Service, you may enter into correspondence with, purchase good and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity are solely between you and the applicable third-party. EVT and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. EVT does not endorse any sites on the Internet that are linked through the Service. EVT provides these links to you only as a matter of convenience, and in no event shall EVT or its licensors be responsible for any content, products, or other materials on or available from such sites. EVT provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software or services may require your agreement to additional or different license or other terms prior to your use of or access to such software or services.

**15. Representation and Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct. EVT makes the following representations and warranties for the benefit of you:

(a) EVT represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online help documentation under normal use and circumstances.

(b) EVT will take every step to ensure that the Services are available to users 365 days per year, 24 hours per day. Notwithstanding the foregoing, EVT is not liable for loss of service, access, or data for any reason including, but not limited to, any unforeseen or preventable failure related to changes in the infrastructure or traffic capabilities, failure or breakdown of the Internet, the World Wide Web, any related telecommunications equipment or systems, or any computer hardware or software.

(c) EVT will from time to time perform system maintenance that will result in an interruption of Service. EVT will attempt to reduce the duration of the downtime and provide advance notice to the Subscriber. However, based on the nature of the maintenance, such notice may not always be possible.

(d) EVT will take reasonable precautions to scan all software supplied to you to verify it is free from viruses or disabling devices; however, the nature of these problems is such that EVT will not guarantee or warrant against the occurrence of such problems.

(e) EVT's entire liability and your exclusive remedy shall be as follows: (1) return of the software within sixty (60) days of purchase to EVT Reseller where purchased with a dated receipt for a full refund of the software license; or (2) if after sixty (60) days of purchase one month credit of the monthly subscription charged by EVT.

**16. DISCLAIMER OF WARRANTIES.** EXCEPT AS PROVIDED ABOVE, THE SOFTWARE, DISK(S), RELATED MATERIALS, CONTENT AND/OR RELATED SERVICES ACCESSIBLE THROUGH THE SOFTWARE, ARE PROVIDED "AS-IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVT AND ITS SUBSIDIARIES, AFFILIATES, RESELLERS, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DISTRIBUTORS, DEALERS OR SUPPLIERS ("REPRESENTATIVES") DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, DISK(S), RELATED MATERIALS, CONTENT AND ANY SERVICES, INCLUDING THEIR FITNESS FOR A PARTICULAR PURPOSE, SECURITY, QUALITY, MERCHANTABILITY, OR THEIR NONINFRINGEMENT. EVT DOES NOT WARRANT THAT THE SOFTWARE OR ANY RELATED SERVICES OR CONTENT IS SECURE, OR IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS, INCLUDING BUT NOT LIMITED TO ACCURATE OR UPDATED THIRD-PARTY CONTENT, NOR DOES EVT WARRANT ACCESS TO THE INTERNET OR TO ANY OTHER SERVICE OR CONTENT THROUGH THE SOFTWARE, OR CONTINUED ACCESS TO THE TRIAL SOFTWARE OR TO THE DATA ENTERED INTO THE TRIAL SOFTWARE AFTER THE SPECIFIED NUMBER OF USES OR AMOUNT OF TIME IN THE MATERIALS ACCOMPANYING THE TRIAL SOFTWARE. SOME STATES DO NOT

ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE OF PURCHASE OF THE LICENSE FOR THE SOFTWARE. HOWEVER, SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS AS WELL, WHICH VARY FROM STATE TO STATE.

THE SOFTWARE AND RELATED SERVICES OR CONTENT ARE DESIGNED TO OPERATE AND PROVIDE INFORMATION WITH THE UNDERSTANDING THAT EVT AND ITS REPRESENTATIVES ARE NOT ENGAGED IN RENDERING LEGAL, ACCOUNTING, OR OTHER PROFESSIONAL SERVICES. IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICE OF A COMPETENT PROFESSIONAL SHOULD BE SOUGHT. EVT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SOFTWARE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), THE GRAMM-LEACH-BLILEY ACT OF 1999, THE SARBANES-OXLEY ACT OF 2002, OR OTHER FEDERAL OR STATE STATUTES OR REGULATIONS. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SOFTWARE, RELATED SERVICES OR CONTENT IS IN ACCORDANCE WITH APPLICABLE LAW. IT IS YOUR RESPONSIBILITY TO KEEP ABREAST OF CHANGES IN LAWS, REGULATIONS AND ACCOUNTING PRACTICES THAT AFFECT YOU AND YOUR BUSINESS.

**17. LIMITATION OF LIABILITY AND DAMAGES.** THE ENTIRE LIABILITY OF EVT OR ITS RESELLER FOR ANY REASON SHALL BE LIMITED TO THE AMOUNT PAID BY THE CUSTOMER FOR THE SOFTWARE LICENSED FROM EVT OR ITS RESELLER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVT AND ITS RESELLER ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO: DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR INVESTMENT, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF EVT OR ITS RESELLER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THIRD PARTY CONTENT PROVIDERS ARE NOT RESPONSIBLE TO YOU FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE OF THE CONTENT. EVT AND ITS REPRESENTATIVES' TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SOFTWARE. SOME STATES DO NOT ALLOW THE LIMITATION AND/OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THE LIMITATIONS OF THE DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN EVT OR ITS RESELLER AND YOU. EVT OR ITS RESELLER WOULD NOT HAVE BEEN ABLE TO PROVIDE THE SOFTWARE TO YOU WITHOUT SUCH LIMITATIONS.

**18. Indemnification.** You agree to indemnify, defend, and hold EVT and its successors, officers, directors and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages, herein referred to as "Claims" (including the indemnified party's reasonable attorneys' fees), arising out of, or in connection with (a) erroneous, privileged, inaccurate or unauthorized information provided to EVT, (b) property damage to the extent caused by the you in

connection with performance of a Statement of Work, or (c) claims by any customer/client of you.

If any action shall be brought against EVT seeking in respect to which indemnity may be sought from you pursuant to the provisions of this Section, EVT shall promptly notify the you in writing, specifying the nature of the action, any related information in the possession or control of the party seeking indemnification and the total monetary amount sought or other such relief as is sought therein. EVT shall cooperate with you at your expense in all reasonable respects in connection with the defense of any such action. EVT shall have the right to employ separate counsel, at its expense, and participate in the defense thereof. you shall reimburse EVT upon demand for any payments made or loss suffered by it at any time after the date hereof, based upon the final judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands, or actions, in respect to any damages to which the foregoing relates.

**19. Taxes.** The amounts to be paid by you to EVT herein do not include any foreign, U.S. federal, state, local, municipal or other governmental taxes, duties, levies, fees, excises or tariffs, arising as a result of or in connection with the transactions contemplated under this Agreement, and you shall be responsible for any taxes related to the Deliverables except for any income or business and occupation taxes of EVT.

**20. Confidentiality.** The parties agree not to disclose any Confidential Information related to this Agreement, including but not limited to proprietary information, personal information and intellectual property of the other party, unless required to do so by court order or administrative law.

**21. Force Majeure.** Except for Subscriber's obligation to pay for the Services rendered, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

**22. General.** This Agreement (including any addendum or amendment to this Agreement) is the entire agreement between you and EVT relating to the Services and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Services or any other subject matter covered by this Agreement.

This Agreement does not limit any rights that EVT may have under trade secret, copyright, patent, trademark or other laws.

If any provision of this Agreement is invalid or unenforceable under applicable law, then it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. No delay or failure on the part of EVT to exercise any right granted under this Agreement, or available at law or in equity, shall be construed as a waiver of such right. The validity and performance of this Agreement shall be governed by Washington law (without reference to choice of law principles), except as to copyright, patent and trademark matters, which are covered by federal laws. You agree to submit to the jurisdiction of the federal and state courts of King County, Washington and waive any objection to venue in such courts. This Agreement is deemed entered into at Redmond, Washington, and shall be construed as to its fair meaning and not strictly for or against either party.

For details about EVT's privacy policies, please refer to the EVT Privacy Statement contained either in the Software or on a website designated by EVT. You agree to be bound by the applicable EVT privacy policies.

EVT, the EVT logo, bLoyal, bLoyal Logo, Director, bLoyal POS Connector, bLoyal Store Connector, Customer Connect, among others, are registered trademarks and/or registered service marks of EVT Solutions, Inc. in the United States and other countries. Other parties' trademarks or service marks are the property of their respective owners and should be treated as such.

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