



Bonterms Standard Reseller Agreement (for Marketplaces) (Version 1.0)

1. Using this Standard Agreement.

- 1.1 Standard Agreement. This Bonterms Standard Reseller Agreement (for Marketplaces) (Version 1.0) (the “**Standard Agreement**”) sets forth the terms and conditions under which Provider authorizes Reseller to resell its Products through the Marketplace. Capitalized terms are defined in context or in Section 15 (Definitions).
- 1.2 Provider-Specific Terms. Provider may (i) make additions to or modifications of this Standard Agreement (“**Additional Terms**”) or (ii) add Attachments by stating as such in the Marketplace Management Portal (or Cover Page). Any Additional Terms and any Attachments are collectively referred to as “**Provider-Specific Terms**.”
- 1.3 Entering the Agreement. Provider and Reseller agree to this Standard Agreement and any Provider-Specific Terms (collectively, the “**Agreement**”) through the Marketplace Management Portal (or, alternatively, by signing a Cover Page).
- 1.4 Order of Precedence. In the event of a conflict between the elements of the terms and conditions making up the Agreement, the order of precedence is: (i) any Amendment, (ii) Provider-Specific Terms (first Additional Terms and then Attachments) and (iii) this Standard Agreement.

2. Appointment of Reseller.

- 2.1 Appointment of Reseller. Provider hereby designates and appoints Reseller as a non-exclusive reseller and distributor of Subscriptions to the Products to Customers in the Marketplace during the Term.
- 2.2 Reseller License.
 - (a) Subject to this Agreement, Provider hereby grants Reseller a non-exclusive, non-transferable (subject to Section 14.1 (Assignment)) right during the Term to market, sell and effectuate distribution (through Provider) of Subscriptions to the Products to Customers in the Marketplace, provided that each Customer is subject to an End User Agreement.
 - (b) Reseller will not sell Subscriptions to any Customer that is a national, state, or local government entity or agency without Provider’s prior consent.
- 2.3 Standard Reseller Terms. Reseller will comply with Provider’s standard reseller program terms as applicable to activities under this Agreement as set forth as an Attachment or as otherwise provided to Reseller by Provider in advance.
- 2.4 Restrictions. Reseller will not (and will not permit any Customer or other third party to): (a) seek to transfer or sublicense any of its rights under this Agreement to any third party; (b) provide access to, distribute, sell or sublicense the Products, except as expressly authorized in this Agreement; (c) use the Products as an end user; (d) reverse engineer, decompile, disassemble or seek to access the source code or non-public APIs to the Products, except to the extent expressly permitted by Law (and then only with prior notice to Provider); (e) rebrand, rename, modify or create derivative works of the Products; (f) remove or obscure any product identification or proprietary notices in the Products; (g) publish benchmarks or performance information about the Products; (h) interfere with a Product’s operation, circumvent its access restrictions or conduct any security or vulnerability test of the Product; or (i) transmit any viruses or other harmful materials to the Products.
- 2.5 Non-Exclusive. Nothing in this Agreement will be deemed to prohibit Provider or Reseller from entering into any reseller, end-user, services or other agreement with any other party anywhere in the world.



3. **Resale of Products.**

- 3.1 Pricing for Resellers. Provider will determine, in its sole discretion, the price at which it makes Subscriptions available to Reseller, including the applicability of discounts or similar arrangements.
- 3.2 Pricing for Customers. Reseller will determine, in its sole discretion, the price at which it makes Subscriptions available to Customers.
- 3.3 Offer Process. When Reseller extends any offer for a Subscription to a Customer, Reseller does so on its own behalf and is solely responsible for the terms, pricing, and conditions of such offer to the Customer, subject to the End User Agreement requirements in Section 3.6 (End User Agreement).
- 3.4 Payments. The Marketplace's rules, not this Agreement, govern billing and payments for transactions under this Agreement.
- 3.5 Fulfillment of Products. Upon notification of an Order, unless otherwise agreed by the parties, Provider will cause the Products to be delivered to the Customer. As between Reseller and Provider, Provider will be solely responsible for fulfillment and performance of the Products.
- 3.6 End User Agreement.
- (a) Reseller acknowledges that Customers will be subject to the end user terms or agreement specified by Provider in the applicable Listing or otherwise through the Marketplace ("**End User Agreement**"). Reseller will not: (i) remove, obscure, or interfere with the presentation of the End User Agreement; (ii) accept the End User Agreement on the Customer's behalf; (iii) enter any terms with Customers that contradict or purport to supersede the End User Agreement; or (iv) fail to reference the End User Agreement in any Customer-specific offers created by Reseller for the Products.
 - (b) Reseller will refer any Customer questions or comments regarding the End User Agreement directly to Provider. If Reseller becomes aware of any unauthorized use of the Products or of any failure by a Customer to comply with an End User Agreement, Reseller will promptly notify Provider.
- 3.7 Support.
- (a) Provider will be solely responsible for providing all support for the Products directly to Customers. Reseller will refer all Customer support requests, technical questions and service issues related to the Products directly to Provider.
 - (b) Reseller will not provide technical support for the Products unless expressly authorized by Provider in writing.
- 3.8 Customer Information. To the extent any Customer information is shared between Provider and Reseller, Reseller may use such information solely to effectuate the sale and fulfillment of Subscriptions to that Customer. Reseller and Provider will obtain any necessary consents for access, use or disclosure of Customer information for other purposes. Reseller and Provider will each comply with their respective privacy policies and all applicable privacy and data protection Laws.
- ### 4. **Conduct.**
- 4.1 Restriction on Reseller Warranties. Reseller will not:
- (a) represent itself as an agent or employee of Provider;
 - (b) make any representation, warranty or commitment on Provider's behalf;



- (c) describe the Products or make any statements regarding their features, capabilities or performance except in a manner consistent with the specific marketing, Documentation or other written descriptions provided by Provider for such purpose; or
- (d) engage in any deceptive, misleading, illegal or unethical practices or violate any Anti-Corruption Laws, including by giving, offering or promising any item of value to any official, person or entity in violation of any Anti-Corruption Laws.

4.2 **Export Compliance.** In its activities under this Agreement, Reseller will comply with all relevant U.S. and foreign export and import Laws.

4.3 **Records and Audit.** Reseller will maintain complete, clear and accurate records of all Customers, Orders and transactions completed under this Agreement. Upon 10 days' notice, Reseller will permit Provider or its representative to review such records (with pricing or other sensitive information redacted as appropriate) and any reasonably necessary related books and records of Reseller necessary to confirm Reseller's compliance with this Agreement. Any such audit will be conducted during normal business hours and in a manner designed to cause minimal impact on Reseller's ordinary business activities. Reseller will maintain all records required under this Agreement for at least three years following termination of this Agreement (or such longer period as required by Law).

5. **Brand Elements.**

5.1 **License to Brand Elements.** During the Term, subject to this Agreement (including the restrictions set forth in Section 5.2 (Brand License Restrictions)), Provider grants Reseller the right to (a) identify itself as an authorized reseller of Provider and (b) use and display its Brand Elements in connection with marketing the Products under this Agreement.

5.2 **Brand License Restrictions.**

- (a) Use of Brand Elements is subject to (i) any standard trademark usage guidelines provided by Provider to Reseller and (ii) review and approval by Provider.
- (b) At Provider's request, Reseller will provide examples of its actual or intended use of the Brand Elements to Provider. Reseller will promptly cease any unauthorized use of the Brand Elements upon Provider's request.
- (c) Reseller will clearly identify itself as an authorized reseller of the Products to avoid any confusion about the source of the Products or Brand Elements.

6. **Warranties.**

6.1 **Mutual Warranties.** Each party represents and warrants that:

- (a) it has the legal power and authority to enter into this Agreement; and
- (b) it will comply with all Laws that apply to its performance under this Agreement.

6.2 **Disclaimers.** **Except as expressly set out in this Agreement, each party disclaims all warranties, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular purpose, title and noninfringement. These disclaimers apply to the full extent permitted by Law.**

7. **Subcontractors.**

7.1 Reseller may not subcontract any of its rights or obligations under this Agreement without the prior approval of Provider. To the extent one or more subcontractors are approved by Provider, Reseller will remain fully responsible for its subcontractors' compliance with this Agreement.



7.2 Provider may use subcontractors under this Agreement, provided it remains fully responsible for its subcontractors' compliance with this Agreement.

8. Term and Termination.

8.1 Term of Agreement. This Agreement will continue in force and effect from the Effective Date until terminated in accordance with its terms (the "Term").

- (a) *For Convenience*. Either party may terminate this Agreement for any or no reason upon 30 days' notice to the other party.
- (b) *For Cause*. Either party may terminate this Agreement if the other party (i) fails to cure a material breach of this Agreement within 10 days after notice, (ii) ceases operation without a successor or (iii) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.

8.2 Effect of Termination.

- (a) Upon any termination of this Agreement, Reseller will (i) cease to be an authorized reseller and have no right to market the Products or accept Orders, (ii) cease use of the Brand Elements and (iii) destroy or return to Provider any property of Provider related to this Agreement.
- (b) Any Customer Subscriptions to the Products granted prior to the termination of this Agreement will survive in accordance with its own terms, but only Provider may extend or renew any Subscriptions after the Term and Reseller will not have a right to any compensation for any subsequent extensions or renewals.
- (c) Neither party will have any liability to the other of any type arising from termination of this Agreement in accordance with its terms.
- (d) The following Sections will survive any termination of this Agreement: 6.2 (Disclaimers), 8.2 (Effect of Termination), 9 (Intellectual Property), 10 (Limitations of Liability), 11 (Indemnification), 12 (Confidentiality), 13 (Publicity), 14 (General Terms) and 15 (Definitions).
- (e) Except where an exclusive remedy is provided, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.
- (f) Upon any termination of this Agreement, Provider and Reseller will each take all necessary steps within its control to: (i) terminate Reseller's resale authorization in the Marketplace and (ii) disable Reseller's ability to create new offers for the Products.

9. Intellectual Property.

9.1 Reserved Rights. All rights not expressly granted in this Agreement are reserved. Except for Reseller's express rights in this Agreement, as between the parties, Provider and its licensors retain all intellectual property and other rights in the Products and any related Provider deliverables or technology.

9.2 Feedback. If Reseller gives Provider feedback regarding improvement or operation of the Products, Provider may use the feedback without restriction or obligation. All feedback is provided "AS IS" and Provider will not publicly identify Reseller as the source of feedback without Reseller's permission. Feedback excludes Confidential Information of Reseller.

10. Limitations of Liability.

10.1 General Cap. Each party's entire liability arising out of or related to this Agreement will not exceed the General Cap.



- 10.2 Consequential Damages Waiver. Neither party will have any liability arising out of or related to this Agreement for indirect, special, incidental, reliance or consequential damages or damages for loss of use, lost profits or interruption of business, even if informed of their possibility in advance.
- 10.3 Exceptions. Sections 10.1 (General Cap) and 10.2 (Consequential Damages Waiver) will not apply to Uncapped Claims.
- 10.4 Nature of Claims. The waivers and limitations in this Section 10 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.
- 10.5 Liability Definitions.

"General Cap" means the aggregate amounts paid or payable by Reseller for Subscriptions in connection with this Agreement in the 12 months immediately preceding the first incident giving rise to liability.

"Uncapped Claims" means (a) the indemnifying party's obligations under Section 11 (Indemnification), (b) either party's infringement or misappropriation of the other party's intellectual property rights, (c) any breach of Section 2.4 (Restrictions), Section 4 (Conduct) or Section 12 (Confidentiality) and (d) liabilities that cannot be limited by Law.

11. **Indemnification.**

- 11.1 Indemnification by Provider. Provider, at its own cost, will defend Reseller from and against any Provider-Covered Claims and will indemnify and hold harmless Reseller from and against any damages or costs awarded against Reseller (including reasonable attorneys' fees) or agreed in settlement by Provider resulting from the Provider-Covered Claims.
- 11.2 Indemnification by Reseller. Reseller, at its own cost, will defend Provider from and against any Reseller-Covered Claims and will indemnify and hold harmless Provider from and against any damages or costs awarded against Provider (including reasonable attorneys' fees) or agreed in settlement by Reseller resulting from the Reseller-Covered Claims.
- 11.3 Indemnification Definitions.

"Reseller-Covered Claim" means a third-party claim arising from (a) Reseller's breach or alleged breach of Section 3.6 (End User Agreement) or Section 4 (Conduct), (b) Provider's use of Reseller's name or logos as authorized under this Agreement or (c) products or services provided by Reseller in connection with the Products.

"Provider-Covered Claim" means a third-party claim (a) that the resale of a Product or use of Brand Elements as authorized in this Agreement, infringes or misappropriates a third party's intellectual property rights or (b) arising from Provider's failure to provision a Subscription to a Customer as required under this Agreement.

- 11.4 Procedures. The indemnifying party's obligations in this Section 11 are subject to receiving from the indemnified party: (a) prompt notice of the claim (but delayed notice will only reduce the indemnifying party's obligations to the extent it is prejudiced by the delay); (b) the exclusive right to control the claim's investigation, defense and settlement; and (c) reasonable cooperation at the indemnifying party's expense. The indemnifying party may not settle a claim without the indemnified party's prior approval if settlement would require the indemnified party to admit fault or take or refrain from taking any action (except regarding use or nonuse of the Product when Provider is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.



- 11.5 **Mitigation.** In response to an infringement or misappropriation claim, if required by settlement or injunction or as Provider determines necessary to avoid material liability, Provider may: (a) procure rights for Reseller's continued resale of the Product; (b) replace or modify the allegedly infringing portion of the Product to avoid infringement, without reducing the Product's overall functionality; or (c) discontinue availability of the affected Product in the Marketplace.
- 11.6 **Exceptions.** Provider's obligations in this Section 11 do not apply to claims resulting from (a) modification or unauthorized use of the Product, (b) use of the Product in combination with items not provided by Provider, including third-party platforms or (c) Software other than the most recent release, if Provider made available (at no additional charge) a newer release that would have avoided infringement.
- 11.7 **Exclusive Remedy.** This Section 11 sets out the indemnified party's exclusive remedy and the indemnifying party's sole liability regarding third-party claims of intellectual property infringement or misappropriation covered by this Section 11.
12. **Confidentiality.**
- 12.1 **Use and Protection.** As recipient, each party will (a) use Confidential Information only to fulfill its obligations and exercise its rights under this Agreement, (b) not disclose Confidential Information to third parties without the discloser's prior approval, except as permitted in this Agreement and (c) protect Confidential Information using at least the same precautions recipient uses for its own similar information and no less than a reasonable standard of care.
- 12.2 **Permitted Disclosures.**
- (a) *Personnel.* The recipient may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided it remains responsible for their compliance with this Section 12 and they are bound to confidentiality obligations no less protective than this Section 12.
- (b) *Required by Law.* The recipient may disclose Confidential Information to the extent required by Law. If permitted by Law, the recipient will give the discloser reasonable advance notice of the required disclosure and reasonably cooperate, at the discloser's expense, to obtain confidential treatment for the Confidential Information.
- 12.3 **Exclusions.** These confidentiality obligations do not apply to information that the recipient can document (a) is or becomes public knowledge through no fault of the recipient, (b) it rightfully knew or possessed, without confidentiality restrictions, prior to receipt from the discloser, (c) it rightfully received from a third party without confidentiality restrictions or (d) it independently developed without using or referencing Confidential Information.
- 12.4 **Remedies.** Breach of this Section 12 may cause substantial harm for which monetary damages are an insufficient remedy. Upon a breach of this Section 12, the discloser is entitled to seek appropriate equitable relief, including an injunction, in addition to other remedies.
13. **Publicity.**
- 13.1 Except as set forth in Section 13.2 below, neither party may make any public statements regarding the other party or this Agreement or use the other party's logos or trademarks without its prior approval or as required by Law.
- 13.2 Reseller may identify itself as a reseller of Provider and use the Brand Elements as authorized under Section 5 (Brand Elements). Provider may make reasonable use of Reseller's name and logos to identify Reseller as a reseller of Provider.
14. **General Terms.**
- 14.1 **Assignment.** Neither party may assign this Agreement without the prior consent of the other party, except that either party may assign this Agreement, with notice to the other party, in connection with the assigning party's merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.



14.2 Governing Law and Courts.

- (a) The Governing Law governs this Agreement and any action arising out of or relating to this Agreement, without reference to conflict of law rules. The parties will adjudicate any such action in the Courts and each party consents to the exclusive jurisdiction and venue of the Courts for these purposes.
- (b) The “**Governing Law**” is the laws of the State of California and the “**Courts**” are the federal and state courts located in San Francisco, California.

14.3 Notices.

- (a) Except as set out in this Agreement, notices, requests and approvals under this Agreement must be in writing to the addresses specified by Provider and Reseller and will be deemed given: (i) upon receipt if by personal delivery, (ii) upon receipt if by certified or registered U.S. mail (return receipt requested), (iii) one day after dispatch if by a commercial overnight delivery service or (iv) upon delivery if by email.

14.4 Entire Agreement.

- (a) This Agreement is the parties’ entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In this Agreement, headings are for convenience only and “including” and similar terms are to be construed without limitation. Terms in purchase orders, quotes or similar documents issued by Reseller or Customer will not amend or modify this Agreement; any such documents are for administrative purposes only. This Agreement may be executed in counterparts (including electronic copies and PDFs), each of which is deemed an original and which together form one and the same agreement.
- (b) Neither the operator of the Marketplace nor Bonterms, the publisher of this Standard Agreement, is a party to this Agreement and neither will have any liability or responsibility to either Provider or Reseller in connection with use of this Standard Agreement.

14.5 Amendments.

- (a) To the extent the parties seek to modify or otherwise amend this Agreement outside of the Marketplace Management Portal, any such amendments must be in writing and signed by each party’s authorized representatives (an “**Amendment**”). Amendments become part of this Agreement.
- (b) Amendments will control in the event of any conflict with the terms of this Agreement.

14.6 Waivers and Severability. Waivers must be signed by the waiving party’s authorized representative and cannot be implied from conduct. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

14.7 Force Majeure. Neither party is liable for a delay or failure to perform this Agreement due to a Force Majeure. If a Force Majeure materially adversely affects the ability of a party to perform for 15 or more consecutive days, either party may terminate this Agreement upon 10 days’ written notice.

14.8 Independent Contractors. The parties are independent contractors, not agents, partners or joint venturers.

14.9 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.



15. **Definitions.**

- 15.1 **"Agreement"** is defined in Section 1.3 (Entering the Agreement).
- 15.2 **"Amendment"** is defined in Section 14.5(a).
- 15.3 **"Anti-Corruption Laws"** means all applicable commercial and public anti-bribery and anti-corruption Laws, including the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and any other anti-bribery and anti-corruption Laws of relevant jurisdictions, which prohibit corrupt offers of anything of value, either directly or indirectly, to anyone, including government officials, to obtain or keep business or to secure any other improper commercial advantage.
- 15.4 **"Attachments"** means any policies, exhibits or other documents specified by Provider to be part of the Agreement through the Marketplace Management Portal (or Cover Page).
- 15.5 **"Brand Elements"** means the specific names, logos, trademarks or service marks of Provider provided under this Agreement for use by Reseller.
- 15.6 **"Cloud Service"** means any kind of hosted software application or service (SaaS) accessed by users remotely over the internet or cloud infrastructure, typically via web browser, API or network interface.
- 15.7 **"Confidential Information"** means information disclosed by or on behalf of one party (as discloser) to the other party (as recipient) under this Agreement, in any form, which (a) the discloser identifies to recipient as "confidential" or "proprietary" or (b) should be reasonably understood as confidential or proprietary due to its nature and the circumstances of its disclosure. Provider's Confidential Information includes technical or performance information about the Product.
- 15.8 **"Courts"** is defined in Section 14.2(b).
- 15.9 **"Cover Page"** means a document that: (a) incorporates the Bonterms Standard Reseller Agreement (for Marketplaces) (Version 1.0) by reference; (b) specifies the name of the Marketplace; (c) specifies the name and notice address for each of Provider and Reseller; (d) specifies the Effective Date; (e) specifies any Additional Terms and incorporates any Attachments; and (f) is signed by Provider and Reseller.
- 15.10 **"Customer"** means the party placing the Order.
- 15.11 **"Documentation"** means Provider's standard usage documentation for the Product. Documentation is included in the definition of "Product" unless otherwise specified.
- 15.12 **"Effective Date"** means the date the parties enter into this Agreement.
- 15.13 **"End User Agreement"** is defined in Section 3.6(a).
- 15.14 **"Force Majeure"** means an unforeseen event beyond a party's reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, third-party Internet or utility failure, refusal of government license or natural disaster, where the affected party takes reasonable and customary measures to avoid or mitigate such event's effects.
- 15.15 **"Governing Law"** is defined in Section 14.2(b).
- 15.16 **"Laws"** means all laws, regulations, rules, court orders or other binding requirements of a government authority that apply to a party.
- 15.17 **"Listing"** means Provider's description of its available Products and Subscriptions in a listing on the Marketplace.
- 15.18 **"Marketplace"** means the specific online marketplace which has made this Standard Agreement available to Provider and Reseller through its Marketplace Management Portal (or which is identified on a Cover Page).



- 15.19 **"Marketplace Management Portal"** means the partner management console or other mechanism designated by the Marketplace for Provider and Reseller to conduct activities under this Agreement.
- 15.20 **"Order"** means an order for a Subscription by a Customer through the Marketplace as facilitated by Reseller, which may include transactions through private offers, private plans, selling authorizations or other Marketplace-specific mechanisms.
- 15.21 **"Product"** means a Cloud Service or Software offered by Provider as specified in a Listing.
- 15.22 **"Provider"** means the party offering Products for resale in the Marketplace and authorizing Reseller under this Agreement.
- 15.23 **"Reseller"** means the party authorized by Provider to resell the Products under this Agreement.
- 15.24 **"Software"** means software products licensed to users for installation, deployment, or use within their own cloud or on-premises environments, including but not limited to virtual machine images, containerized applications, downloadable software and development tools.
- 15.25 **"Standard Agreement"** is defined in Section 1.1 (Standard Agreement).
- 15.26 **"Subscription"** means the right for a Customer to access and use a Product as described in a Listing, which may be on a subscription, metered, pay as you go or other basis.
- 15.27 **"Term"** is defined in Section 8.1 (Term of Agreement).