



Bonterms Professional Services Agreement (Version 1.2)

1. **The Agreement.** The Bonterms Professional Services Agreement provides standardized terms for the provision of professional services. To use the Bonterms Professional Services Agreement, Customer and Provider complete and execute a Cover Page that specifies Key Terms, Attachments and any Additional Terms. Collectively, the Bonterms Professional Services Agreement, Cover Page and any SOWs or Change Orders form the parties' agreement ("**Agreement**"). Conflicts between parts of the Agreement are governed by Section 17.5 (Order of Precedence). Capitalized terms are defined in context or in Section 2 (Definitions).
2. **Definitions.**
 - 2.1. "**Action**" means any actual or threatened claim, regulatory proceeding, lawsuit or other legal action.
 - 2.2. "**Additional Terms**" means any additions to or modifications of the Bonterms Professional Services Agreement that the parties specify on the Cover Page.
 - 2.3. "**Affiliate**" means an entity controlled, controlling or under common control with a party, where control means at least 50% ownership or power to direct an entity's management.
 - 2.4. "**Agreement**" is defined in Section 1.
 - 2.5. "**Assigned Deliverables**" means Deliverables specified by the parties to be assigned by Provider to Customer in accordance with Section 6, but excluding any Third-Party Materials or Reserved Materials.
 - 2.6. "**Attachments**" means any attachments, policies or documents that the parties specify on the Cover Page.
 - 2.7. "**Bonterms Professional Services Agreement**" means this Bonterms Professional Services Agreement (Version 1.2).
 - 2.8. "**Change Order**" is defined in Section 3.3.
 - 2.9. "**Change Request**" is defined in Section 3.3.
 - 2.10. "**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. Information on the Cover Page is each party's Confidential Information. Customer's Confidential Information includes all Customer Materials.
 - 2.11. "**Content**" means reports or findings, audio or visual material (including any text, print, images, photos or digital media assets), data, code, scripts or software (whether in object or source code form), documentation or other tangible or intangible material or deliverables of any type.
 - 2.12. "**Copyleft License**" means any Open Source license that seeks to require any party that uses, modifies or distributes the licensed code to make such code (or modification or derivative work thereof) or any other code that may be combined with or linked to such code available in source code form under such same license (such as, for example purposes only, any version of the GPL or LGPL, Affero, CPL, Eclipse or Mozilla licenses).
 - 2.13. "**Cover Page**" means a Bonterms cover page or other document that (a) incorporates the Bonterms Professional Services Agreement by reference, (b) specifies the Key Terms and any Additional Terms and incorporates any Attachments and (c) is signed by Customer and Provider.
 - 2.14. "**Customer**" means the party identified as "Customer" on the Cover Page.
 - 2.15. "**Customer Facility**" means any physical office, workspace, data center or other location used by or under the control of Customer.
 - 2.16. "**Customer Materials**" means Content or other materials of any kind that Customer makes available to Provider in connection with the Services.
 - 2.17. "**Customer Policies**" means any information security, privacy, safety, control, protection or other policies or guidelines as Customer may provide to Provider from time to time.



- 2.18. **“Customer System”** means any computer, network, application programming interface (API) or other system of any kind that Customer permits Provider to access in connection with the Services.
- 2.19. **“Deliverables”** means any Content provided by Provider to Customer in connection with the Services (including any related drafts, interim versions, specifications, flow charts or diagrams).
- 2.20. **“Escalation Lead”** is defined in Section 4.1.
- 2.21. **“Escalation Process”** is defined in Section 4.3.
- 2.22. **“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.
- 2.23. **“Insurance Requirements”** is defined in Section 17.9.
- 2.24. **“Intellectual Property Rights”** means any and all intellectual property rights of any kind, including patent, copyright, trade secret, trademark (including trade dress or packaging) or design rights, know-how, moral rights, rights of privacy, publicity and similar rights of any type, and any applications, continuations or other registrations with respect to any of the foregoing, under any applicable Laws.
- 2.25. **“Key Terms”** means Effective Date, Rights in Deliverables, Governing Law, Courts or other terms specified by the parties as “Key Terms” on the Cover Page.
- 2.26. **“Laws”** means all laws, regulations, rules, court orders or other binding requirements of a government authority that apply to a party.
- 2.27. **“Licensed Deliverables”** means Deliverables specified by the parties to be licensed by Provider to Customer in accordance with Section 6, including any Third-Party Materials or Reserved Materials.
- 2.28. **“Open Source”** means any open source code or libraries of any type (such as, for example purposes only, any code licensed under any version of the Apache, BSD, Eclipse, GPL or LGPL, MIT or Mozilla licenses).
- 2.29. **“Payment Period”** is defined in Section 10.1.
- 2.30. **“Project Lead”** is defined in Section 4.1.
- 2.31. **“Provider”** means the party identified as “Provider” on the Cover Page.
- 2.32. **“Reserved Materials”** means any Content of any kind developed by Provider prior to rendering any Services under this Agreement and that is specified as such in the applicable SOW.
- 2.33. **“Rights in Deliverables”** is a Key Term specified by the parties on their Cover Page specifying whether Deliverables will be Licensed Deliverables or Assigned Deliverables.
- 2.34. **“Services”** means the professional services and any Deliverables provided to Customer under this Agreement or any SOW.
- 2.35. **“SOW”** means an order or other statement of work for Services that is executed by the parties and references this Agreement.
- 2.36. **“SOW Term”** means the term for Provider’s delivery of the Services as identified in a SOW.
- 2.37. **“Specifications”** means the description and any other requirements for the Services or a Deliverable set forth in a SOW or this Agreement.
- 2.38. **“Subcontractor”** is defined in Section 3.5.
- 2.39. **“Taxes”** is defined in Section 10.6.
- 2.40. **“Third-Party Materials”** means any Content that is not the sole property of Provider and that is specified as such in the applicable SOW.
- 2.41. **“Virus”** means viruses, malicious code or similar harmful materials.



3. Services.

- 3.1. Generally. Provider will provide the Services in a timely manner and provide each Deliverable no later than the delivery dates specified in the SOW.
- 3.2. Customer Dependencies. To the extent specified in a SOW, Provider's ability to provide a Deliverable or other element of the Services may be dependent upon Customer's provision of information or other Customer Materials to Provider (each, a "**Dependency**"). Provider will notify Customer in the event the Services may be delayed due to Customer's failure to provide a Dependency when required by the SOW.
- 3.3. Change Orders.
- (a) *Change Request*. Either Customer or Provider may request a change to Deliverables, Services or other elements of a SOW upon notice to the other party ("**Change Request**").
 - (b) *Change Order*. Within 10 days of receipt of a Change Request, each party's Project Leads will meet (virtually or in person) to discuss the Change Request. Provider will then prepare a change order describing proposed changes to the SOW, including any adjustments to the schedule, fees or expenses (a "**Change Order**").
 - (c) *Implementation*. Change Orders are not binding unless executed by both parties. If the parties are unable to agree on resolution of a Change Request, either party may commence an Escalation Process.
- 3.4. Acceptance. To the extent that a Deliverable is specified as subject to acceptance in a SOW, the provisions of this Section 3.4 will apply.
- (a) *Test Period*. Customer will have 15 days (the "**Test Period**") following receipt of each Deliverable to review such Deliverable for material conformance to the Specifications. If Customer determines that a Deliverable is not in conformance with the Specifications, it will so notify Provider and specify the nonconformance in reasonable detail ("**Review Notice**").
 - (b) *Deemed Acceptance*. If Customer fails to issue a Review Notice within the Test Period, the applicable Deliverable will be deemed accepted.
 - (c) *Remediation*. Provider will have 15 days following receipt of a Review Notice to remedy the identified nonconformance and resubmit the Deliverable for subsequent review in accordance with this provision. If after resubmission Customer determines that the Deliverable still does not materially conform to the Specifications, Customer may elect one of the following alternatives by notice to Provider: (i) extend the Test Period for further remedy and review in accordance with the procedure set forth above, (ii) accept the Deliverable (without prejudice to any other rights Customer may have) or (iii) terminate the SOW and, as its exclusive remedy and Provider's sole liability for the failure to achieve acceptance, receive the remedies set forth in Section 3.4 (d) below.
 - (d) *Termination Remedies*. If Customer terminates the SOW, (i) Provider will promptly refund to Customer any fees paid for the rejected Deliverable (and any related element of the Services the value of which was materially degraded due to absence of the Deliverable) and any pre-paid, unused fees and (ii) Customer will be relieved of paying any further fees under the SOW.
 - (e) *Warranty Independent*. Acceptance under this provision will not affect any warranty obligation of Provider under this Agreement.
 - (f) *Invoicing*. No invoice will be issued for any Deliverable (or corresponding Services) until the Deliverable has been accepted by Customer in accordance with this provision.
- 3.5. Subcontractors. Provider may not subcontract any element of the Services without the prior approval of Customer. To the extent one or more subcontractors are approved by Customer (each, a "**Subcontractor**"), Provider will (a) remain directly responsible to Customer for the acts and omissions of each Subcontractor and (b) ensure each Subcontractor is bound in writing to terms equally as protective of Customer as the terms of this Agreement (including as may be necessary to secure any rights from any such Subcontractor for purposes of Section 6 (Rights in Deliverables)) and complies with such terms.



4. Communication and Escalation.

- 4.1. Project Leads. Customer and Provider will specify in each SOW (a) an individual with responsibility and authority to operate as their company's key point of contact and decisionmaker (a "**Project Lead**") and (b) another individual with more senior executive authority to serve as their point of escalation ("**Escalation Lead**").
- 4.2. Project Updates. Provider's Project Lead will provide regular updates to Customer's Project Lead on the status of the Services and Deliverables, including with respect to delivery dates or other timeframes specified in the SOW.
- 4.3. Escalation Process. To the extent either party believes the other has failed to perform a required action under any SOW or this Agreement or the parties disagree over acceptance, a Change Request or other process, the parties' Project Leads will meet (virtually or in person) and discuss the issue in good faith. To the extent the Project Leads are unable to resolve the issue within 10 days, either party may request a meeting of the Escalation Leads and within 10 days of such request, the Escalation Leads will use reasonable and good faith efforts to resolve the matter. The process described in this Section is the "**Escalation Process**."

5. Creation of Deliverables.

- 5.1. Generally. Provider will independently create all Deliverables, except that Provider may use Subcontractors in accordance with Section 3.5 (Subcontractors) and Third-Party Materials in accordance with Section 5.2 (Third-Party Materials).
- 5.2. Third-Party Materials. Provider will not incorporate into or include with any Deliverable any Third-Party Materials unless Provider (a) has specifically identified in reasonable detail such Third-Party Materials in the applicable SOW and (b) has obtained, at its own expense, any third-party rights necessary to license the Third-Party Materials to Customer as a Licensed Deliverable under Section 6.2 (Licensed Deliverables).
- 5.3. Open Source. The following provisions apply to the extent that any Third-Party Materials consist of Open Source:
 - (a) *List*. Provider will list each individual item of Open Source (including any other code incorporated in such code) and include complete related license and copyright attribution information.
 - (b) *No Copyleft*. Unless otherwise specified for a particular Deliverable in a SOW (in which case the SOW will control), in no event will Provider incorporate into or include with any Deliverable any Open Source licensed under a Copyleft License.
 - (c) *Open Source License Governs*. Customer acknowledges that its license to use any Open Source will be the Open Source license applicable to such code and not the license for Licensed Deliverables to the extent required by such Open Source license.

6. Rights in Deliverables.

- 6.1. Designation. All Deliverables will be provided as Licensed Deliverables or Assigned Deliverables as specified by the parties under **Rights in Deliverables** on the Cover Page, unless otherwise specified for a particular Deliverable in a SOW (in which case the SOW will control).
- 6.2. Licensed Deliverables. If a Deliverable is a Licensed Deliverable, this Section 6.2 applies.
 - (a) *License*. Provider hereby grants to Customer a non-exclusive, royalty-free, irrevocable, worldwide, transferable, perpetual right and license (with right to sublicense through multiple tiers) to make, have made, sell, use, import, export, execute, reproduce, distribute, modify, adapt, publicly display, publicly perform, prepare derivative works of, and disclose Licensed Deliverables.
- 6.3. Assigned Deliverables. If a Deliverable is an Assigned Deliverable, this Section 6.3 applies.
 - (a) *Assignment*. Assigned Deliverables will be the sole and exclusive property of Customer. Provider will and hereby does irrevocably assign to Customer all right, title and interest in and to Assigned Deliverables and all related Intellectual Property Rights.
 - (b) *Work-for-Hire*. To the fullest extent permitted by law, all copyrightable aspects of Assigned Deliverables will be deemed to be a "work made for hire" (as defined in Section 101 of Title 17 of the United States Code).



- (c) *Third-Party Materials*. To the extent any Third-Party Materials are included in an Assigned Deliverable in accordance with Section 5.2 (Third-Party Materials), such Third-Party Materials are hereby licensed by Provider to Customer under the license for Licensed Deliverables in Section 6.2(a).
- (d) *Reserved Materials*. Provider will not incorporate into or provide with any Assigned Deliverable any Reserved Materials unless Provider has specifically identified in reasonable detail such Reserved Materials in the applicable SOW. To the extent any Reserved Materials are included in an Assigned Deliverable, such Reserved Materials are hereby licensed by Provider to Customer under the license for Licensed Deliverables in Section 6.2(a).
- (e) *Waived Rights*. If Provider has any rights in an Assigned Deliverable that cannot be assigned to Customer (including any moral rights, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation), Provider hereby unconditionally and irrevocably waives the enforcement of such rights (“**Waived Rights**”) and waives and quitclaims to Customer all Actions of any kind against Customer and its licensees (through multiple tiers) with respect to Waived Rights. At Customer’s request and expense, Provider will consent to and join in any Actions to enforce Waived Rights.
- (f) *Further Assurances*. At Customer’s request and expense, during and after the term of this Agreement, Provider will reasonably assist and cooperate with Customer, including by executing documents, providing testimony and taking such further acts reasonably requested by Customer, to enable Customer to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights in and to the Assigned Deliverables.
- (g) *Attorney-in-Fact*. In the event that Customer is unable for any reason, after reasonable effort, to secure Provider’s signature on any document needed in connection with the actions specified in this Section 6.3, Provider hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Provider’s agent and attorney-in-fact, to act for and on its behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 6.3 with the same legal force and effect as if executed by Provider.

6.4. Rights in Bankruptcy. The licenses granted to Customer under this Agreement constitute a license to rights in “intellectual property” subject to Section 365(n) of Title 11 of the United States Code (Bankruptcy Code) and Customer is entitled to all rights and benefits under such Section 365(n) in accordance with its terms.

6.5. Reservation of Rights. Neither party grants the other any rights or licenses not expressly set out in this Agreement.

7. Representations and Warranties.

7.1. Mutual Warranties. Each party represents and warrants that: (a) it has the legal power and authority to enter into this Agreement, (b) its performance under this Agreement will not conflict with any obligation it may have to any other party and (c) it will comply with all Laws that apply to its performance under this Agreement.

7.2. Performance Warranty.

- (a) *Scope*. Provider represents and warrants that: (i) it will perform the Services in a timely, professional and workmanlike manner and with a degree of quality equal to or higher than applicable industry standards for similar services and (ii) all Services and each Deliverable will conform in all material respects with the Specifications (collectively, the “**Performance Warranty**”).
- (b) *Remediation*. Provider will use reasonable efforts to correct a verified breach of the Performance Warranty reported by Customer. If Provider fails to do so within 30 days after Customer’s warranty report (“**Fix Period**”), then either party may terminate the SOW, in which case Provider will refund to Customer any fees paid for the non-compliant Services or Deliverable and any pre-paid, unused fees and Customer will be relieved of paying any further fees under the SOW. To receive these remedies, Customer must report a breach of warranty in reasonable detail within 30 days after delivery of the relevant Service or Deliverable (“**Claim Period**”).
- (c) *Sole Remedy*. Other than any acceptance or other rights specified in a SOW, these procedures are Customer’s exclusive remedies and Provider’s sole liability for breach of the Performance Warranty.



7.3. **Intellectual Property Rights.** Provider represents and warrants that:

- (a) *All Necessary Rights.* Provider has and will have all necessary rights to grant the licenses and make the assignments set forth in this Agreement (including having all necessary assignment agreements or other proprietary rights agreements in place with employees and Subcontractors and licenses with licensors).
- (b) *Non-Infringement.* Neither the Services nor Deliverables, nor any element thereof, will (i) infringe the Intellectual Property Rights of any third party, (ii) incorporate any third-party confidential information or (iii) be subject to any restrictions, liens, pledges, security interests, encumbrances or encroachments.
- (c) *No Clearances Required.* Customer's (and its licensees') exercise of all rights assigned and licensed under this Agreement will not require any third-party consents or clearances or payment of any fees, residuals or other amounts of any kind to any third party (including union or guild fees, publicity rights clearances or music synchronization or mechanical license fees).

7.4. **No Litigation.** Provider represents and warrants that there are no pending Actions pertaining to Provider, the Services or the Deliverables that could affect either party's ability to fully perform its duties, exercise its rights or expose it to liability under this Agreement. Provider will notify Customer immediately if Provider becomes aware of any such actual or threatened Actions.

7.5. **No Harmful Code.** Provider represents and warrants that the Services and all Deliverables will be free of any (a) Viruses or (b) features that enable disabling, timing out, remote monitoring or collection of data that are not expressly disclosed in the Specifications.

7.6. **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.

8. Customer Materials, Systems and Facilities.

8.1. Customer Materials.

- (a) Provider may use Customer Materials solely to the extent necessary to provide the Services to Customer and for no other purpose.
- (b) To the extent Customer Materials include information about an identified or identifiable natural person, Provider will comply with any data processing or protection terms identified by Customer in the Cover Page or applicable SOW.
- (c) Except for Provider's use rights specified in this Agreement, between the parties Customer retains all Intellectual Property Rights and other rights in any Customer Materials.

8.2. Customer Systems.

- (a) Provider may access and use Customer Systems solely (i) to the extent expressly authorized by Customer in a SOW or otherwise in writing, (ii) to the extent necessary to provide the Services to Customer and for no other purpose and (iii) in strict accordance with any time period, identified personnel, access control or other Customer Policies or instructions issued by Customer.

8.3. Customer Facilities.

- (a) To the extent Provider is granted physical access to any Customer Facilities, Provider may access Customer Facilities solely (i) to provide the Services to Customer and for no other purpose and (ii) in strict accordance with any Customer Policies or other instructions issued by Customer.
- (b) As between the parties, Provider will be solely liable for its acts or omissions (including those of its employees, agents or Subcontractors) while at any Customer Facility, including those resulting in personal injury or property damage.



- 8.4. **Compliance.** Without limiting the foregoing, Provider warrants that it has adequate personnel, security and operational measures in place to comply with the obligations of this Section 8 and to ensure that it will not impair the security, integrity or availability of any Customer Materials, Customer Systems or Customer Facilities. Upon request by Customer, Provider will timely provide such documentation, third-party audit reports or other information reasonably necessary for Customer to verify Provider's compliance with these obligations.
9. **Affiliates.** Customer's Affiliates may enter into their own SOWs as mutually agreed with Provider, which creates a separate agreement between each such Affiliate and Provider incorporating this Agreement with the Affiliate treated as "Customer". Neither Customer nor any Customer Affiliate has any rights under each other's separate agreement with Provider, and breach or termination of any such separate agreement affects only that agreement.
10. **Fees and Expenses.**
- 10.1. **Fees.** Customer will pay the fees described in the SOW. Unless the SOW states otherwise, all amounts are due within 30 days after the invoice date (the "**Payment Period**"). All fees are nonrefundable except as expressly set forth in this Agreement.
- 10.2. **Expenses.** Customer will not reimburse Provider for any expenses unless such expenses are specified in the applicable SOW. When specified in the applicable SOW, Customer will pay reasonable, pre-approved travel and related expenses incurred by Provider in performing the Services, subject to Customer's then-current travel and expense policies (if provided to Provider in advance or referenced in the SOW).
- 10.3. **Late Payments.** Late payments are subject to a charge of 1.5% per month or the maximum amount allowed by Law, whichever is less.
- 10.4. **Invoice Cutoff.** Customer will have no obligation to pay any fees or expenses that Provider invoices more than 120 days after the fees or expenses were incurred.
- 10.5. **No Other Compensation.** This Section 10 sets forth the only compensation that Provider is entitled to receive in exchange for the Services or Deliverables and Provider is not entitled to any other payments, reimbursements, royalties or consideration of any kind.
- 10.6. **Taxes.** Customer is responsible for any sales, use, GST, value-added, withholding or similar taxes or levies that apply to the Services, whether domestic or foreign ("**Taxes**"), other than Provider's income tax. Fees and expenses are exclusive of Taxes.
- 10.7. **Payment Disputes.** If Customer disputes an invoice in good faith, it will notify Provider within the Payment Period and the parties will seek to resolve the dispute over a 15-day discussion period. Customer is not required to pay disputed amounts during the discussion period, but Customer will timely pay all undisputed amounts. After the discussion period and any further Escalation Process, either party may pursue any available remedies.
11. **Term and Termination.**
- 11.1. **Agreement.** This Agreement starts on the **Effective Date** and continues until the end of all SOW Terms, unless sooner terminated in accordance with its terms. If no SOW Term is in effect, either party may terminate this Agreement for any or no reason with notice to the other party.
- 11.2. Individual SOWs.
- (a) *SOW Terms.* Each SOW Term will be for the period specified in the SOW.
- (b) *Termination for Convenience.* Unless otherwise specified in the SOW, Customer may terminate any SOW for any or no reason at any time upon 30 days' notice to Provider, provided that such termination will not become effective until Customer has paid all fees and expenses incurred through the time of termination.
- 11.3. **Termination for Cause.** Either party may terminate this Agreement (including all SOWs) if the other party (a) fails to cure a material breach of this Agreement within 30 days after notice, (b) ceases operation without a successor or (c) 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.



11.4. Effect of Termination.

- (a) *Cessation of Services.* Upon any termination of this Agreement, Provider will cease to provide the Services and promptly deliver to Customer all Deliverables (in whatever state of completion) and return or (if directed by Customer) destroy all Customer Materials or other Confidential Information.
- (b) *Survival.* The following Sections will survive expiration or termination of this Agreement: 2 (Definitions), 6 (Rights in Deliverables), 8 (Customer Materials, Systems and Facilities)(to the extent Provider still has any access), 10 (Fees and Expenses)(for amounts then due), 11.4 (Effect of Termination), 12 (Limitations of Liability), 13 (Indemnification), 14 (Confidentiality), 15 (Required Disclosures), 16 (Publicity) and 17 (General Terms).
- (c) *Exclusivity of Remedies.* Except where an exclusive remedy is provided, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.

12. Limitations of Liability.

- 12.1. General Cap. Each party's entire liability arising out of or related to this Agreement will not exceed the General Cap.
- 12.2. 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.
- 12.3. Exceptions. Sections 12.1 (General Cap) and 12.2 (Consequential Damages Waiver) will not apply to Uncapped Claims.
- 12.4. Nature of Claims. The waivers and limitations in this Section 12 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.
- 12.5. Liability Definitions. The following definitions apply unless modified on the Cover Page.

"General Cap" means amounts paid or payable by Customer to Provider under 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 13 (Indemnification), (b) Provider's breach of Section 8 (Customer Materials, Systems and Facilities), (c) either party's breach of Section 14 (Confidentiality), (d) any claims for personal injury or tangible property damage caused by the negligence or willful misconduct of Provider (including its employees, agents or Subcontractors) and (e) liabilities that cannot be limited by Law.

13. Indemnification.

- 13.1. Indemnification by Provider. Provider, at its own cost, will defend Customer from and against any Provider-Covered Claims and will indemnify and hold harmless Customer from and against any damages or costs awarded against Customer (including reasonable attorneys' fees) or agreed in settlement by Provider resulting from the Provider-Covered Claims.
- 13.2. Indemnification by Customer. Customer, at its own cost, will defend Provider from and against any Customer-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 Customer resulting from the Customer-Covered Claims.
- 13.3. Indemnification Definitions. The following definitions apply unless modified on the Cover Page.

"Covered Claim" means a Customer-Covered Claim or a Provider-Covered Claim.

"Customer-Covered Claim" means a third-party Action alleging that the Customer Materials, when used by Provider as authorized under this Agreement, infringe or misappropriate a third party's Intellectual Property Rights.

"Provider-Covered Claim" means a third-party Action (a) arising from any breach by Provider of Section 8 (Customer Materials, Systems and Facilities) or (b) alleging that the Services or any Deliverable infringes or misappropriates a third party's Intellectual Property Rights.



- 13.4. **Procedures.** The indemnifying party's obligations in this Section 13 are subject to receiving from the indemnified party (a) prompt notice of the Covered 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 Covered Claim's investigation, defense and settlement and (c) reasonable cooperation at the indemnifying party's expense. The indemnifying party may not settle a Covered 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. The indemnified party may participate in a Covered Claim with its own counsel at its own expense.
- 13.5. **Mitigation.** In response to an infringement or misappropriation Covered Claim, if required by settlement or injunction or as Provider determines necessary to avoid material liability, Provider may: (a) procure rights for Customer's continued use of the affected Service or Deliverable, (b) replace or modify the allegedly infringing portion of the Service or Deliverable with a substantially similar non-infringing equivalent that meets the standards of the SOW or, if neither (a) nor (b) is commercially feasible, (c) terminate the affected SOW and refund to Customer all fees and expenses related to the SOW.
- 13.6. **Exceptions.** Provider's obligations in this Section 13 do not apply to Covered Claims to the extent resulting from (a) Customer Materials, (b) Customer's modifications to the Deliverables or (c) use of the Deliverables in combination with items not provided by Provider.
- 13.7. **Exclusive Remedy.** This Section 13 sets out the indemnified party's exclusive remedy and the indemnifying party's sole liability regarding third-party Actions alleging intellectual property infringement or misappropriation covered by this Section 13.
- 14. Confidentiality.**
- 14.1. **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.
- 14.2. **Permitted Disclosures.** The recipient may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Provider, its Subcontractors), provided it remains responsible for their compliance with this Section 14 and they are bound to confidentiality obligations no less protective than this Section 14.
- 14.3. **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.
- 14.4. **Remedies.** Breach of this Section 14 may cause substantial harm for which monetary damages are an insufficient remedy. Upon a breach of this Section, the discloser is entitled to seek appropriate equitable relief, including an injunction, in addition to other remedies.
- 14.5. **Immunity for Disclosures to Government or Court by Provider.** This Section 14.5 applies only if Provider is an individual. Notwithstanding anything to the contrary in this Agreement, in accordance with Section 1833(b) of Title 18 of the United States Code (Defend Trade Secrets Act of 2016), Provider will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (a) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, if Provider sues Customer for retaliation based on the reporting of a suspected violation of law, Provider may disclose a trade secret to Provider's attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.



15. **Required Disclosures.** The recipient may disclose Confidential Information to the extent required by Laws. 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.
16. **Publicity.** Neither party may publicly announce this Agreement or otherwise use the other's name or logo without the other party's prior approval (except as required by Laws).
17. **General Terms.**
 - 17.1. **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.
 - 17.2. **Governing Law and Courts.** 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.
 - 17.3. **Notices.** Except as set out in this Agreement, notices, requests, consents and approvals under this Agreement must be in writing to the addresses on the Cover Page and will be deemed given (a) upon receipt if by personal delivery, (b) upon receipt if by certified or registered U.S. mail (return receipt requested), (c) one day after dispatch if by commercial overnight delivery or (d) upon delivery if by email. Either party may update its address with notice to the other.
 - 17.4. **Entire Agreement.** 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. Excluding SOWs, terms in business forms, purchase orders or quotes used by either party 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.
 - 17.5. **Order of Precedence.** The Cover Page (first any Additional Terms and then Attachments) will control in any conflict with the Bonterms Professional Services Agreement. A SOW may not modify any other part of the Agreement unless the SOW specifically identifies the provisions that it supersedes.
 - 17.6. **Amendments.** Any amendments to this Agreement must be in writing and signed by each party's authorized representatives.
 - 17.7. **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.
 - 17.8. **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 delivery of the Services for 15 or more consecutive days, either party may terminate the affected SOW(s) upon notice to the other and Provider will refund to Customer any pre-paid, unused fees for the terminated portion of the SOW Term. However, this Section 17.8 does not limit Customer's obligations to pay fees owed.
 - 17.9. **Insurance.**
 - (a) **Specified Requirements.** Provider will implement and maintain insurance coverage in the types, amounts and duration specified on the Cover Page or applicable SOW ("**Insurance Requirements**").
 - (b) **Default Requirements.** If no Insurance Requirements are identified, Provider will obtain and maintain adequate liability (including with respect to provision of services), automobile, workers' compensation, cybersecurity, unemployment compensation, disability or other types of insurance required by law or as is common practice for similar service providers in the industry, including coverage for any Customer Materials under the custody or control of Provider.
 - (c) **Certificates of Insurance.** Upon request, Provider will provide Customer with certificates of insurance or evidence of coverage under this Agreement.



17.10. Independent Contractors.

- (a) *Status*. The parties are independent contractors, not agents, partners or joint venturers. Except to the limited extent Customer is authorized pursuant to Section 6.3(g) (Attorney-in-Fact), neither party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so.
- (b) *Taxes and Benefits*. Provider is solely responsible and liable for any employment-related taxes, insurance premiums or other employment benefits respecting Provider's performance of the Services. Neither Provider nor any of Provider's employees, agents or Subcontractors are eligible for any benefits (including, without limitation, stock options, health insurance or retirement benefits) by or from Customer. Customer will not be responsible for the payment of any duties or taxes imposed on the income or profits of Provider.

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