

betterworks

Terms and Conditions

By signing an Order Form (an “**Order Form**”), entered into between the customer specified on such Order Form (“**Customer**”) and BetterWorks Systems, Inc. (“**Betterworks**”), which references these Terms and Conditions (these “**Terms and Conditions**” and, together with the Order Form, the “**Agreement**”), Betterworks and Customer each signifies that it has read, understands, and agrees to be bound by the terms and conditions hereof. Betterworks and Customer may be referred to individually as a “**Party**” and collectively as the “**Parties**.” For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to these terms and conditions through their undersigned authorized representatives.

1. SUMMARY

These Terms and Conditions govern the access and use by Customer of any services (the “**Services**”) ordered by Customer from Betterworks and set forth in one (1) or more Order Forms.

2. ORDER FORMS, TRAINING AND SUPPORT

2.1 Order Forms

Customer may purchase subscriptions and access to the Services by executing one (1) or more Order Forms with Betterworks. Betterworks will provide the Services identified in the Order Form(s) pursuant to these Terms and Conditions.

2.2 Training, Onboarding, and Support

If applicable, Betterworks will provide training, onboarding services, and support as specified on the applicable Order Form(s). Betterworks may communicate directly with any end user of Customer with respect to any support, training, product updates, release notes, best practices or other information related to any Services.

3. FEES AND PAYMENT

3.1 Fees

In consideration for the Services, Customer agrees to pay Betterworks the fees set forth in the applicable Order Form(s) (collectively, the “**Fees**”). All Fees are non-refundable.

3.2 Payment Terms

Unless otherwise set forth in an Order Form, Customer will pay to Betterworks (by wire transfer or other method mutually acceptable to the Parties) all Fees within thirty (30) days of the applicable invoice. Late payment of Fees may be subject to interest on the past due amount at the lesser of 1.5% per month or the maximum rate permitted by applicable law.

3.3 Taxes; Travel

All Fees are exclusive of, and Customer shall pay, all taxes, duties, and assessments, however designated, which are levied or imposed upon such Fees, excluding only taxes based on Betterworks’ net income. Except as otherwise expressly set forth in an Order Form, Fees do not include reasonable travel expenses and Customer shall pay all costs of agreed-upon travel (if any).

4 TERM AND TERMINATION

4.1 Order Form Term

The “**Initial Term**” of each Order Form will commence on the Effective Date set forth on such Order Form, and will continue until the date set forth on such Order Form. Unless otherwise set forth on the relevant Order Form, each Order Form will automatically renew after the Initial Term for successive renewal terms of the duration identified on that Order Form (each a “**Renewal Term**”), unless either Party gives prior notice of its intent not to renew such Order Form at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term. Betterworks may increase the Fees due

under Order Forms for the applicable Renewal Term (if any) by providing notice to Customer of such increase at least sixty (60) days before the commencement of the upcoming Renewal Term.

4.2 Agreement Term

The “Term” of the Agreement shall be the duration of the then-current Initial Term or Renewal Term(s) of the applicable Order Form(s). For purposes of clarity, the Term of this Agreement will commence on the Effective Date specified in the first Order Form and will continue until either (a) the Order Form(s) are terminated in accordance with [Section 5.1](#) below, or (b) all Order Forms under this Agreement have expired.

5. TERMINATION

5.1 Termination By Either Party

Notwithstanding anything to the contrary in this Agreement, either Party may terminate the Order Form(s) if the other Party materially fails to perform or observe any term or condition in this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the non-breaching Party.

5.2 Effect of Termination

The following sections of this Agreement will survive termination or expiration of this Agreement for any reason: [Sections 3, 5.2, and 6.3-12](#). All other rights and obligations of the Parties under this Agreement will expire and terminate upon the earlier of the termination or expiration of this Agreement. At any time during the then-current Term, Betterworks will provide Customer with access to the Customer Data (defined below) in the then-current standard export format or another industry-standard format mutually agreed by the Parties. At expiration or termination, Betterworks shall delete Customer Data within 30 (thirty) days.

6. LICENSES, RESTRICTIONS, AND RESPONSIBILITIES

6.1 License From Betterworks

Subject to the terms and conditions of this Agreement and the applicable Order Form(s), Betterworks hereby grants to Customer a limited, worldwide, nonexclusive, non-transferable, royalty-free right and license (without the right to sublicense), during the applicable Order Form Term(s), to access and use the Services.

6.2 Customer Data

Customer acknowledges and agrees that the provision of the Betterworks Services to Customer may require the use of Customer Data (defined below) and that Betterworks is permitted to use such Customer Data for the provision of the Services to Customer and that such right shall immediately terminate upon the termination or expiration of this Agreement.

As between Customer and Betterworks, Customer will retain sole and exclusive ownership of all Customer Data. “Customer Data” means confidential or proprietary data supplied by Customer or end users of Customer (“Users”) to Betterworks through the use of the Services. Customer Data will be void of sensitive personal information (e.g., Customer will not pass to Betterworks or store inside the Betterworks website or space (“Site”) sensitive personal information including, but not limited to, date of birth, Social Security number, driver’s license number, other government-issued identification number, financial account number, credit or debit card number, insurance ID or account number, health or medical information, consumer reports, background checks, biometric data, digital signatures, any code or password that could be used to gain access to financial resources, or any other unique identifier of a user or individual). For purposes of clarity, information that is reasonably in scope of this Agreement is personal information limited to: name, work email, title, office location, and office phone number. Notwithstanding the foregoing, Customer Data does not include Betterworks’ Aggregated Anonymous Data (defined below).

6.3 Use of the Services; Ownership of Services

Customer may use the Services only as permitted under this Agreement and the applicable Order Form(s) and in compliance with all applicable laws. Without limiting the foregoing, Customer will not copy, modify, make derivative works of, disassemble, reverse engineer, decompile or in any way attempt to extract the source code of, the Sites (defined below), Services, or any component thereof. Betterworks retains all title, ownership, and, except for the limited license granted pursuant to [Section 6.1](#), other rights in and to the Services, including, without limitation, any and all intellectual property rights associated with the Services.

6.4 Account

Customer agrees that Customer is responsible for maintaining the confidentiality of Customer's username, account number and passwords and responsible for any unauthorized usage by Customer or Users. Each Party agrees to immediately notify the Other Party of any unauthorized use of Customer's account of which the Party becomes aware.

6.5 Content

Customer agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings, and any other material ("**Content**") displayed, posted, uploaded, stored, exchanged or transmitted on or through the Services. Under no circumstances will Betterworks be liable to Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content. Customer understands and agrees that by displaying, posting, uploading, storing, exchanging or transmitting Content while using the Services or otherwise providing Content to a Betterworks Site, Betterworks has no control over what Customer or its Users of any of the Services post or submit to a Site and cannot guarantee the accuracy of any information submitted by any User. Customer shall contact Betterworks Customer Support if Customer becomes aware of misuse of the Services by Customer or Users. Betterworks, acting in good faith, may without notice or liability investigate any complaints or suspected violations of this Agreement that come to its attention and may take any action that it believes is appropriate, including, but not limited to, rejecting, refusing to post, or removing any Content, or other data, or restricting, suspending, or terminating Customer or any User's access to a Site or Services, however, Betterworks also reserves the right not to take any action.

6.6 Privacy & Security

For the duration of the Term, Betterworks will maintain administrative, physical, and technical safeguards that meet then-current and relevant industry standards related to the privacy, security, confidentiality, integrity, and availability of Customer Data, including, without limitation, by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Customer Data from unauthorized access, use, disclosure, alteration, or destruction. Betterworks will use Customer Data consistent with this Agreement and Betterworks' privacy notice at <https://www.betterworks.com/privacy-notice> (the "**Privacy Notice**"). While Betterworks reserves the right to update or change its Privacy Notice from time to time by posting a revised version of such Privacy Notice at the foregoing link, Betterworks will notify Users of any material changes via email or splash page in the Services. To support Betterworks' Services, Betterworks may utilize third parties that process Customer Data (each, a "**Sub-Processor**"). Betterworks utilizes third-party Sub-Processors to provide infrastructure support and to provide assistance with customer support, email notifications, and communication as part of the Services to Customer. Prior to contracting with any third-party Sub-Processor, and on an ongoing basis no less than once per year, Betterworks evaluates each Sub-Processor's administrative, physical, and technical practices to ensure that the third party maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of Customer Data and preventing unauthorized access. Betterworks will provide notice to Customer of its use of Sub-Processors by keeping its list of Sub-Processors current at <https://www.betterworks.com/sub-processors/>. In the event Customer does not agree to Betterworks' use of Sub-Processors, Customer may terminate the Agreement for convenience with written notice to Betterworks (where Fees due on the then-current Term are not absolved and Betterworks will not provide refunds). Customer bears sole responsibility for adequate security, protection and backup of its Customer Data in Customer's (or its employee's, representative's, or agent's) possession or control.

6.7 Aggregated Anonymous Data

Betterworks may aggregate the metadata and usage data of Customer so that the results are non-personally identifiable with respect to Customer or User ("**Aggregated Anonymous Data**"). The Aggregated Anonymous Data will be deemed Betterworks' Technology, and Customer acknowledges that Betterworks may use the Aggregated Anonymous Data (i) for its own internal, statistical analysis, (ii) to develop and improve the Services, and (iii) to create and distribute reports and other materials regarding use of the Services. For purposes of clarity, nothing in this Section 6.7 gives Betterworks the right (or ability) to publicly identify Customer as the source of any Aggregated Anonymous Data.

6.8 Service Levels, Support

Subject to the terms and conditions of this Agreement and the applicable Order Form(s), Betterworks will provide the Betterworks Service in accordance with the Betterworks SLA, located at <https://www.betterworks.com/sla> ("**SLA**"). Betterworks will also provide support services in accordance with the applicable Order Form(s).

7. CONFIDENTIALITY

7.1 Nondisclosure

Each Party (each a **“Receiving Party”**) agrees that it shall use and reproduce the Confidential Information of the other Party (the **“Disclosing Party”**) only for purposes of exercising its rights and performing its obligations under this Agreement, and only to the extent necessary for such purposes, and shall restrict disclosure of such Confidential Information to the Receiving Party’s employees, consultants, or advisors who have a need to know, and shall not disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. The foregoing obligations shall be satisfied by the Receiving Party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information, but not less than reasonable care. All third parties to whom the Receiving Party discloses Confidential Information must be bound in writing by obligations of confidentiality and non-use at least as protective of such information as this Agreement. Notwithstanding the foregoing, it shall not be a breach of this Agreement for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding, provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior written notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.

For purposes of this Agreement, **“Confidential Information”** means information and tangible materials disclosed by the Disclosing Party or its affiliate (collectively **“Discloser”**) to the Receiving Party or its affiliates under the Agreement with respect to which a reasonable person would have an expectation of confidentiality because (i) the tangible materials have a “Confidential” or similar marking, or (ii) the information and materials are disclosed in circumstances where the Receiving Party reasonably should understand such information and materials are to be treated as confidential, whether or not marked “Confidential” (including, without limitation, the Disclosing Party and any third party’s information and materials relating to any of the following – inventions or trade secrets; proprietary software or other technology; pricing and discounting of products or services; company finances; personally-identifiable information; data; the features and performance of products and services; employees and contractors; customers; business partners; strategies, plans, forecasts and opportunities; research and development; and concepts, know-how, design and techniques). Betterworks Technology is regarded as Betterworks’ Confidential Information. Notwithstanding anything contrary in the Agreement, Betterworks may disclose the existence or terms of this Agreement to third parties who are under confidentiality obligations to Betterworks no less protective of Customer than the confidentiality terms set forth herein when related to due diligence efforts related to bank lines, equity funding, IPO, or changes in control with a merger or acquisition; provided that, Betterworks shall be liable for a breach of this [Section 7](#) by any such third parties.

7.2 Exceptions

Notwithstanding anything to the contrary herein, neither Party shall be liable for using or disclosing information that such Party can prove: (i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party; (ii) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; or (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party’s rights.

7.3 Feedback

Customer may be asked to provide suggestions, ideas, recommendations, bug fixes, corrections, or other feedback (**“Feedback”**) regarding the Service(s), though Customer is under no obligation to provide Feedback. Customer agrees that if Customer provides Feedback, Betterworks is free to reproduce, make, use, create derivative works of, publicly perform, display, import, transmit, distribute, license, sell, offer to sell, or otherwise dispose of such Feedback without payment of compensation or any other obligation of any kind to Customer.

7.4 No License to Confidential Information.

All Confidential Information, including, without limitation, all copies of Confidential Information exchanged under the Agreement, is and will remain the property of the Disclosing Party and/or Disclosing Party’s licensors.

8. COPYRIGHT, MARKS, AND INTELLECTUAL PROPERTY

8.1 Copyright

Customer retains copyright and any other rights it already holds in Content which Customer submits, stores, posts or displays on or through, the Services. Customer may not post, store, modify, distribute, or reproduce in any way copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. Betterworks may deny access to the Sites or the Services to any User who is alleged to infringe another party's copyright.

8.2 Use of Customer's Name and Logo

If by mutual written agreement between the Parties, Betterworks creates a co-branded Service website as part of the delivery of Services, then Customer agrees that Betterworks may use Customer's name, logo, and other trademarks or service marks of Customer (collectively "**Customer's Trademarks**") to create said co-branded Service website as part of delivery of the Services and that it will provide Betterworks with applicable trademark usage guidelines, as necessary. Nothing in this Agreement transfers to Betterworks any right, title, or interest in or to the Customer's Trademarks, and all goodwill arising from use of the Customer's Trademarks will inure to the Customer's benefit.

Betterworks may include Customer's name or logo in Betterworks' customer lists for marketing and promotional purposes unless or until Customer provides direction not to do so with written notice. At no out of pocket expense to Customer, Customer may be asked to participate in Betterworks' reference program by working with a Betterworks representative to develop a Customer profile for use on Betterworks.com and for other marketing activities. Should Customer elect to participate in such reference program, Betterworks hereby grants Customer the right to use and distribute any and all co-marketing and promotional elements created by Betterworks, provided Customer pays for its own applicable distribution fees (if any).

8.3 Betterworks IP

Customer acknowledges that in using the Services, Customer may have access to or might be permitted to use documents, software, works of authorship, inventions, technology, hardware, products, processes, algorithms, user interfaces, know-how, trade secrets, techniques, designs, and other tangible or intangible technical material or information (collectively, "**Betterworks Technology**"), and that the Betterworks Technology is covered by or subject to Intellectual property rights owned or licensed by Betterworks (collectively, "**Betterworks IP Rights**"). Except in connection with the license granted pursuant to Section 6.1, no license or other rights in or to the Betterworks Technology or Betterworks IP Rights, even if developed, invented, delivered, or authored by Betterworks under or in connection with this Agreement, are granted, assigned, licensed or conveyed to Customer, and all such Betterworks Technology and Betterworks IP Rights are hereby expressly reserved exclusively by Betterworks.

9. WARRANTIES

9.1 Disclaimer of Warranties

EXCEPT TO THE EXTENT EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT (OR OTHERWISE REQUIRED BY APPLICABLE LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER), THE SERVICES AND BETTERWORKS TECHNOLOGY ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND BETTERWORKS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE.

BETTERWORKS AND ITS AFFILIATES AND LICENSORS HEREBY SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BETTERWORKS AND ITS AFFILIATES AND LICENSORS FURTHER DO NOT REPRESENT OR WARRANT THAT THE BETTERWORKS SERVICE OR ANY INFORMATION PROVIDED THEREFROM WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, ERROR-FREE OR FREE OF VIRUSES, NOR DOES BETTERWORKS WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET, OR ANY QUALITY OF COMMUNICATIONS MADE THROUGH THE BETTERWORKS SERVICE.

10. LIMITATION OF LIABILITY

10.1 Exclusion of Consequential and Related Damages

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES. THE LIMITATIONS IN THIS SECTION 10 APPLY REGARDLESS OF (i) WHETHER EITHER PARTY HAS ADVANCE

NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, OR (ii) THE FORM OF CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE). THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10.2 Liability Cap

EXCEPT IN CONNECTION WITH EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS (SECTION 7), EITHER PARTY'S LIABILITY AND OBLIGATION TO THE OTHER WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID (OR DUE) BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL THE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

11. INDEMNIFICATION

11.1 Indemnification. Betterworks shall indemnify, defend and hold harmless Customer and its officers, directors, consultants, employees, successors and permitted assigns from and against any claim, demand or action of an unaffiliated third-party that the technology underlying the Services infringes or misappropriates any copyright or patent, or any third party intellectual property right. Customer shall indemnify, defend and hold harmless Betterworks and its officers, directors, consultants, employees, successors and permitted assigns from and against any claim, demand or action made or brought against Betterworks by an unaffiliated third party alleging that Customer's Content or other data or use of the Services in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law.

11.2 Indemnification Procedure The Parties' obligations under Section 11 are the Parties' entire respective liability and sole and exclusive remedies for infringement or misappropriation actions and third party liability of any kind relating to this Agreement, and are conditioned upon the indemnified company and individuals: (a) providing the indemnifying Party with prompt written notice of the lawsuit or action (though any failure to give notice will only affect the indemnifying Party's obligations to the extent such failure materially impaired the indemnifying Party's ability to effectively defend or settle the lawsuit or action); (b) giving the indemnifying Party sole control of the defense of the lawsuit or action and any related settlement negotiations (though the indemnified company and individuals may participate in the defense and settlement at their own expense, and the indemnifying Party may not enter into any settlement that adversely affects the indemnified company and individuals' respective interests to a material degree without their written consent); and (c) providing to the indemnifying Party (at the indemnifying Party's expense) all assistance, information and authority reasonably required to effectively defend or settle the lawsuit or action.

12. GENERAL

12.1 Governing Law, Jurisdiction and Venue

The laws of the State of California and the United States, without regard to any conflicts-of-laws provisions or rules, govern the Agreement. The exclusive jurisdiction and venue for any legal proceedings or actions arising out of or relating to the Agreement will be the California State and U.S. federal courts located in Santa Clara County, California, and both Parties hereby submit to the personal jurisdiction of those courts and irrevocably waive any objection they may have to such venue.

12.2 Prevailing Party Attorneys' Fees

If the Parties litigate any issue relating to the Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, costs and expenses (including, without limitation, expert witness fees and costs of appeal).

12.3 Injunctive Relief

The Parties acknowledge and agree that any breach or threatened breach of the Agreement may cause harm for which money damages may not provide an adequate remedy. Accordingly, the Parties agree that in the event of a breach or threatened breach of the Agreement, in addition to any other available remedies, each Party may seek temporary and permanent injunctive relief without the need to post any bond or other security that otherwise may be required under applicable law.

12.4 Assignment

Neither Party shall assign or transfer, by operation of law or otherwise, any rights or obligations under this Agreement without the prior written consent of the other Party, except in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets not involving a direct competitor of the other Party.

12.5 Waiver; Severability; Interpretation

No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. If a court of competent jurisdiction finds any provision of the Agreement to be unenforceable or invalid, then to the maximum extent permitted by law, that provision will be modified and interpreted to accomplish the objectives of such provision, or severed, and the remaining provisions will remain in full force and effect. Each Party has had a reasonable opportunity to participate in the drafting of the Agreement, and to consult its own counsel with respect to that drafting; accordingly, no ambiguity in the Agreement will be construed against either Party by virtue of such Party's role in drafting the Agreement. The Agreement does not obligate either Party to proceed with any other activities. The Agreement also does not give rise to any expectation of compensation, or to any other inducement to take (or refrain from) any other action except as expressly set forth in the Agreement.

12.6 Notices

Any notices required under the Agreement shall be in writing (email being sufficient) and addressed to the person identified in an Order Form or, if no such person is identified, to the signatories of the Order Form.

12.7 Counterparts

The Agreement may be signed in duplicate originals, or in separate counterparts, which are effective as if the Parties signed a single original. A facsimile, scanned, pdf or other electronic version of an original signature transmitted to the other Party is effective as though the original were sent to the other Party.

12.8 Entire Agreement; Changes

The Agreement (including the Order Form and its Exhibits) constitute the entire agreement between the Parties regarding this subject matter, and supersede all prior agreements, representations and understandings, oral or written, between the Parties regarding this subject matter. The Agreement may not be amended, modified or supplemented except by a written amendment signed by an authorized representative of each Party.