

# Sales Agreement

This Sales Agreement (the “**Agreement**”) is entered into by and between **BytePlus KK** (BytePlus株式会社), a company incorporated under the laws of Japan, with its business office at Shinjuku Sumitomo Building F27, Nishi-Shinjuku 2-6-1, Shinjuku City, Tokyo, (“**BytePlus**”) and you or your Organization (collectively “**Customer**” or “**you**”), and sets forth the terms and conditions applicable to the Services you subscribed through AWS Marketplace.

This Agreement includes and incorporates by reference: (1) the Order Form; (2) Bytehouse Customer Agreement (<https://docs.bytehouse.cloud/en/docs/customer-agreement>) and its applicable policies and appendixes. Each Order Form submitted by you to BytePlus is an offer by you to purchase Services under the terms of this Agreement. BytePlus shall be deemed to have accepted an Order Form if it indicates to you that it has accepted the relevant Order Form in writing or if BytePlus does any act consistent with fulfilling the Order Form, at which point this Agreement shall commence and take effect (the “**Effective Date**”).

Capitalized terms used in this Agreement shall have the meanings given in the Bytehouse Customer Agreement unless otherwise specified herein. In the event of any conflict between the terms and conditions of the various components of the foregoing documents, the following order of precedence will apply: (a) any amendment agreed upon by the parties, (b) the Order Form, and (c) this Agreement, and (d) the Bytehouse Customer Agreement and its applicable policies and appendixes.

By submitting an Order Form that references these terms, or by accessing or using the Services, you hereby represent, warrant, acknowledge, and agree that you have read and understood the terms of this Agreement and that you agree to be bound by them.

## 1. Provision of Services

1.1 BytePlus hereby agrees to provide the Services to you according to the terms under the Agreement and the specific Order Form.

BytePlus represents and warrants that the Services will be performed in a professional manner with a level of care, skill and diligence performed by experienced and knowledgeable professionals in the performance of similar services.

1.2 Subject to your compliance with this Agreement, during the Term, you are granted a limited, non-exclusive, non-transferable, revocable, non-perpetual, terminable and non-sublicensable license to, and to permit Authorized Users to, access and use the Services (together with all associated Documentation) solely for your internal business purposes.

1.3 BytePlus will use commercially reasonable efforts to make the Services available to you.

1.4 BytePlus may update the Services from time to time at its sole discretion in order to enhance your user experience, improve and/or ensure the security of the Services. BytePlus may notify you of such Updates in ways including but not limited to system prompts, announcements, internal messages, and updating the Documentation. If you do not accept and use the Updated version of the Platform and/or Services, some functions may become restricted or unavailable to you.

## 2. Term

This Agreement shall come into effect on the Effective Date and remain valid until the last Order Form executed under this Agreement is terminated, unless earlier terminated in accordance with

Clause 9 (*Termination*) (the “**Term**” ).

### 3. Customer Obligations

3.1 You shall make payment for Service Fees in accordance with the terms under this Agreement, **in particular Section 5 (*Payment and Taxes*)**, and by such date as set out in the rules of AWS Marketplace.

3.2 You hereby understand and agree that your use of the Service shall be furtherly subject to the terms and conditions under the Bytehouse Customer Agreement and its applicable policies and appendixes.

### 4. IP Rights

#### 4.1 General

You acknowledge and agree that all IP Rights in and to the (1) Services and (2) any works developed or derived therefrom, including without limitation to any software, source and object codes, algorithms, data models (whether or not any of the foregoing have been developed using your Data), technology, web pages, text, pictures, images, audio, video, charts, layout design, and electronic documents, any Updates or customizations to the Platform and Services, and any Documentation created by BytePlus or its related Affiliates ; (c) any reports or data generated by BytePlus or its related Affiliates in the course of providing the Platform or Services to you or from algorithms, models, Data or Content uploaded by you to the Platform; (d) any intangible ideas, residual knowledge, concepts, know-how and techniques related to or learned from BytePlus or its related Affiliates’ s provision of the Platform or Services; and (e) any operational and technical data relating to the Platform and Services (including without limitation to user login information, operation records, and service orders, etc.), belong to and vest in BytePlus or its related Affiliates and remain the sole and absolute property of BytePlus or its related Affiliates.

#### 4.2 Trade Marks

You shall not, without our prior written consent use any trade marks, service marks, trade names, domain names, website name, other significant brand features or specific descriptions which will allow a third party to identify BytePlus and/or its Affiliates (hereinafter collectively referred to as “**Proprietary Markings**” ) belonging to BytePlus and/or its Affiliates; (b) display, use, apply for registration of trademarks, apply for registration of domain names any of the aforementioned Proprietary Markings (whether in itself or in combination with any other elements), or represent to any other persons, whether expressly or impliedly, that you have the right to display, use or to otherwise dispose of the Proprietary Markings; (c) modify, alter, remove, delete or destroy any of our proprietary markings or proprietary legends placed upon or contained within the Website, Platform, Services or any related materials or any Documentation; or (d) take any action which would cause the Website, Platform and/or Services or any part thereof to be placed in the public domain or to become open source software or permit any third party to do so.

#### 4.3 Feedback

4.3.1 Any Feedback provided by you to BytePlus shall be the sole and exclusive property of BytePlus and BytePlus shall have the right to use and disclose any ideas, know-how, concepts, techniques, or other IP Rights contained in such Feedback in any manner and for any purpose in BytePlus discretion without remuneration, compensation or attribution to you, provided that the foregoing shall not create or imply any obligation on the part of BytePlus to use such Feedback. You now assign to BytePlus with full title guarantee and free from all encumbrances the IP Rights in the Feedback together with the right to sue for and recover damages or other relief in respect of the infringement of those rights and you are required to take all reasonable

actions to effect such assignment. In relation to future copyright, the assignment under this Clause 4.3.1 shall take effect as a present assignment of future copyright.

4.3.2 If and to the extent that, for whatever reason, the aforementioned IP Rights in Feedback cannot be vested in BytePlus or its related Affiliates despite your best endeavours to ensure and procure the same, you shall grant BytePlus or its related Affiliates a perpetual, worldwide, irrevocable, non-exclusive, sub-licensable, transferable and license fee/royalty-free right and license to use such Feedback for any purposes whatsoever without any obligation of attribution or consent.

#### 4.4 Customer IPR

4.4.1 You shall grant to BytePlus and its Affiliates, for the Term of this Agreement, a non-exclusive, non-transferable and royalty-free license to use the name, logos, trademarks, Data, Content or any other IP Rights of your Organization ( "Customer's IPR" ) for the purpose of providing the Services to you and the purposes set out in this Clause. To the extent that any such Customer's IPR are owned by a person other than you, you shall have and represent and warrant that you have entered into such arrangements with such persons as may be required for the grant of these rights and licenses to BytePlus or its related Affiliates.

4.4.2 Notwithstanding anything herein to the contrary, you acknowledge and agree that we may, during the Term: (a) display the name, trade marks, brand, logo and content of a similar nature of yourself on BytePlus and its Affiliates website and related marketing assets as a customer of the Services; (b) use and publish your testimonials, Feedback, and case study regarding the Services in publications, presentations and marketing assets used by us; and (c) include you as our reference in its quotations, bidding documents, tender documents, submissions for accreditations or awards or other documents of a similar nature.

## 5. Payment and Taxes

### 5.1 Invoice and Payment

5.1.1 BytePlus shall have the right to invoice you for the Service Fees in accordance with the price as set out in the Order Form or as otherwise provided under this Agreement, and in accordance with the frequency as set out in our agreements with AWS Marketplace. The Parties agree that, notwithstanding any term to the contrary, BytePlus shall not be obliged to invoice the Customer within any specified timeframe, and a delay or failure by BytePlus to invoice the Customer shall not constitute a waiver of BytePlus' right to collect, and the Customer' s obligation to pay the Service Fees.

5.1.2 You shall make payment for Service Fees on time. All bank charges are to be borne by Customer. Except as otherwise specified herein or in an Order Form, payment obligations are non-cancellable and Service Fees paid are non-refundable. Where an invoice does not specify a due date for payment, the Customer shall pay such Service Fees stated in the invoice within thirty (30) days of the date of issue of the invoice.

5.1.3 For the avoidance of doubt, the Customer shall be responsible for and pay all banking, transaction and payment processing fees of every nature in connection with the payment of Service Fees.

5.1.4 If the Customer fails to make payments when due, then without prejudice to BytePlus' other rights and remedies, BytePlus shall have the right to suspend the access to and/or use of any of the Services by the Customer and/or terminate this Agreement immediately.

5.1.5 Late Payment. If any amount owed by you under this Agreement or any other agreement for any Services is overdue, BytePlus may, without prejudice to its other rights and remedies: (a) charge interest of 1.5% per annum (or the highest rate permitted by law, if less), on the overdue



sum from and including the date such sum becomes due and payable up to and including the date of actual payment ( “ **Late Payment Interest Rate** ” ); (b) accelerate all unpaid fee obligations of you under such agreements so that all such obligations become immediately due and payable; and/or (c) disable your Account and/or suspend your access to the Platform and the Services, until such amounts are paid in full.

## **5.2 Taxes and Gross Up**

**5.2.1 Unless otherwise stated, our fees and pricing do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use, or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, “ Taxes ” ). You are responsible for paying all Taxes associated with your purchases or orders hereunder.**

**5.2.2 If required by Applicable Law to set-off, counter-claim, deduct or withhold, you will gross up the relevant amount to ensure that we receives the full cash amount that it would have received without such deduction or withholding.**

### **5.2.3 Set Off**

**All amounts payable under this Agreement must be paid free and clear of, and without set-off, counter-claim, deduction or withholding for, any taxes, currency control restrictions or other withholdings.**

**The Parties acknowledge and agree that the tax terms herein are essential elements of the bargain between the parties, without which we would not have entered into this Agreement.**

## **6. Confidentiality**

6.1 Subject to Clause 6.2, each Party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person.

6.2 A Party may disclose Confidential Information: (a) if and to the extent required by law or order of the courts, or by any securities exchange or regulatory or governmental body to which such party is subject, wherever situated; or (b) on a necessary basis and under conditions of confidentiality to the professional advisers, auditors and bankers of such Party; or (c) if such Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or (d) with the prior written approval of the other Party.

6.3 The restrictions contained in this Clause 6 shall continue to apply after the termination or expiry of this Agreement (however arising) without limit in time.

## **7. Representations and Warranties**

7.1 Each of the Parties represents and warrants that:

- (1) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to fully perform its obligations hereunder;
- (2) this Agreement, when executed, will constitute valid and binding obligations on such Party (and in the case of the Authorized User, on Authorized User’ s Organization), in accordance with the terms herein;
- (3) it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement; and
- (4) it will comply with Applicable Laws applicable to its provision or use Services, as applicable, including but not limited to, any Data Protection Laws.

7.2 This Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or

services which are similar to those provided under this Agreement.

## 8. Suspension

8.1 You acknowledge and agree that:

8.1.1 BytePlus may suspend your access to, or use of the Services ( “ **Suspension** ” ) if BytePlus is directed to do so by any governmental or regulatory authority, or if BytePlus reasonably believes or determines that: (a) you are in breach of this Agreement, any Policies or any Applicable Law, or if any other grounds for suspending your Account and your access to, or use of, the Services under this Agreement had been satisfied; (b) your access to, or use of the Services disrupts or poses a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services or to any customer or vendor of BytePlus (including yourself); or (c) you are in breach of the payment obligations under the rules of AWS Marketplace.

8.1.2 While BytePlus will use commercially reasonable efforts to re-establish the Services promptly after BytePlus determines that the issue causing the Suspension has been resolved, BytePlus shall not be liable for any damage, liabilities, Losses (including any loss of data or profits), or any other consequences that you may incur as a result of a Suspension.

8.1.3 You shall remain responsible for all fees and charges you incur during the period of Suspension and shall not be entitled to any reductions in such fees and charges or service credits for the period of Suspension.

## 9. Termination

9.1 Termination for Convenience

9.1.1 You may terminate this Agreement at any time for any reason by giving at least thirty (30) days prior written notice to us and closing your Account for all Services which we provide.

9.1.2 We may terminate this Agreement at any time without reason and without any liability whatsoever by giving at least fourteen (14) days prior written notice to you.

9.2 Termination for Cause

9.2.1 Either Party may by written notice to the other Party terminate this Agreement forthwith immediately if: (a) the other Party commits a material breach of any term or condition of this Agreement and which in the case of a breach capable of being remedied has not been remedied within thirty (30) days of a written request to remedy the same; (b) the other Party has committed a material breach of this Agreement which is not capable of remedy; (c) the other Party becomes subject to an Insolvency Event; (d) the other Party is prevented or prohibited by law from performing its obligations under this Agreement; or (e) either Party is prevented by a Force Majeure Event from performing its obligations in accordance with this Agreement for more than thirty (30) days.

9.2.2 We may also terminate this Agreement immediately upon notice to you: (a) if we have the right to suspend your Account; (b) if we are directed to do so by any governmental or regulatory authority; or (c) if BytePlus discontinue the Service.

9.3 Effects of Termination

9.3.1 Upon termination of the Agreement: (a) all licenses granted to you and all your rights under this Agreement shall immediately terminate; (b) you shall immediately close all Authorized User Accounts in respect of all Services and cease to use, and ensure each Authorized User ceases to use the Services; (c) any and all of the software supplied hereunder by , including any copies or translations thereof, in any format, shall be at BytePlus sole election and at your

expense, immediately returned to BytePlus or destroyed by you; (d) you shall upon written request by BytePlus, return or destroy securely all Confidential Information you received from BytePlus and certify to BytePlus that this has been done; (e) you shall remove all Content (including your Confidential Information) from the Platform within such period of time as is informed to you by BytePlus, provided that BytePlus shall be entitled to make your access to your Content conditional upon your payment of any outstanding monies to us. For the avoidance of doubt, any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of any Party, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

9.3.2 Termination Fees. Notwithstanding anything to the contrary in this Agreement, Customer shall, within thirty (30) days of such termination, pay the Termination Fees in the event that: (a) this Agreement or any Order Form is terminated by us due to material breach, Insolvency Event or change of Control of Customer; or (b) this Agreement or any Order Form is terminated by Customer without cause.

9.3.3 The following clauses shall survive any termination or expiration of this Agreement: Clauses 4 (IP Rights), 6 (Confidentiality), 11 (Disclaimer), 12 (Limitation of Liability), 13 (Indemnity), 14 (Governing Law and Dispute Resolution), and 15 (General Terms).

## 11. Disclaimer

11.1 We do not make any representations or warranties, whether express, implied, statutory or otherwise regarding the Services, and specifically disclaim and exclude all implied warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law including any implied warranty of merchantability, of satisfactory quality, of timeliness, of effectiveness, of accuracy, or of fitness for a particular purpose. In particular, we do not warrant that the Services will meet your requirements, operate without interruption, achieve any intended result, be compatible or work with any software system or other services, will not infringe any person's rights (including IP Rights), will be secure, accurate, complete, up to date, effective, uninterrupted or error-free, or will not contain any harmful code. No oral or written information or advice given by us or our representatives shall create any warranty. Your use of the Services is entirely at your own risk.

11.2 This Clause 11 shall apply to the fullest extent permitted by Applicable Laws.

## 12. Limitation of Liability

12.1 We or our Affiliates shall not be liable for any failure to provide Services (or any part thereof) to the extent that such failure is attributable to your failure to fulfil your obligations under this Agreement, or any other act or omission of you.

12.2 Nothing in this Agreement excludes the liability of us for:

- death or personal injury caused by our negligence;
- fraud or fraudulent misrepresentation; and
- any other liability which cannot be excluded by law.

12.3 Subject to Clauses 12.1 and 12.2, under no circumstances shall we be liable to you for any indirect, incidental, consequential, special, exemplary, punitive, enhanced, or other damages (including without limitation to damages for loss or interruption of business, loss of data, loss of goodwill, loss of business reputation, lost profits or third party costs), under any theory of liability, including without limitation contract, negligence, strict liability, or other theory arising



out of or relating in any way to your use of the Services, even if we have been advised of the risk of such damages.

12.4 Subject to Clauses 12.1 to 12.3 (inclusive) and to the maximum extent permitted by Applicable Law:

12.4.1 Our maximum aggregate liability to you arising out of or relating in any way to your use of the Services, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise shall be limited to direct damages and shall not exceed the aggregate amount that we have received for the use of the Services for the twelve (12) month period prior to the first claim.

12.5 The Parties acknowledge and agree that the disclaimers in Clause 11, limitations of liability in this Clause 12 and in the other provisions of this Agreement and the allocation of risk herein are essential elements of the bargain between the parties, without which we would not have entered into this Agreement.

## 13. Indemnity

13.1 You shall indemnify and at all times hereafter keep us and our Affiliates (including their respective officers, employees and agents) (each an “Indemnified Party” ) indemnified against any and all direct and indirect Losses, damages, actions, proceedings, costs, claims, demands, liabilities (including full legal costs on a solicitor and own client basis) which may be suffered or incurred by the Indemnified Party or asserted against the Indemnified Party by any person or entity (including you) whatsoever, in respect of any matter or event whatsoever arising out of, in the course of, by reason of or in respect of or related to your use (or misuse) of the any Services, any violation by you of this Agreement or any Policies, any breach by you of the applicable Data Protection Laws, or any breach of the representations, warranties and covenants made by you herein.

13.2 Subject to Clause 13.4, we shall defend you against a claim that your use of the Services infringes the IP Rights or other proprietary rights of any person and shall indemnify you for all amounts awarded against you in final judgment or settlement of such claim provided that:

- we are given prompt notice of any such claim;
- you provide all reasonable co-operation to us in the defence and settlement of such claim;
- we are given sole authority to defend or settle the claim; and
- the claim for alleged infringement is not based on any of the circumstances listed in Clause 13.4.

13.3 Should the Services become or, in our reasonable opinion be likely to become, the subject of any claim, we may, in our sole discretion and at our option and expense, either:

- procure for you the right to continue to use the Services as contemplated by this Agreement;
- replace or modify the Services to make its use in accordance with this Agreement non-infringing; or
- with thirty (30) days’ notice to you, terminate this Agreement, and refund to you, in the same currency the fees we were paid, any Services Fees we already received covering the remainder of the Term after the effective date of termination, and you shall be responsible for all applicable bank transaction fees.

13.4 In no event shall us, our employees, agents, sub-contractors be liable to you to the extent that the alleged infringement is based on:

- a Customer Failure;

- a modification of the Services or Documentation by anyone other than BytePlus or its related Affiliates;
- your use of the Services or Documentation in a manner contrary to the instructions given to you by BytePlus or its related Affiliates; or
- your use of the Services or Documentation after notice of the alleged or actual infringement from BytePlus or its related Affiliates or any appropriate authority.

13.5 Clauses 13.2 to 13.4 (inclusive) state our sole liability to, and your sole and exclusive remedies against us for claims of infringement of third party IP Rights in relation to the Services.

## 14. Governing Law and Dispute Resolution

This Agreement and any dispute or claim in connection with it shall be governed by and be construed in accordance with the laws as set out in the Bytehouse Customer Agreement. Each Party hereby submits to the jurisdiction of the dispute resolution venue(s) as set out in the Bytehouse Customer Agreement.

## 15. General Terms

**15.1 No Assignment.** You may not assign any of your rights or delegate your obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of us. We may assign the Agreement in its entirety (including all terms and conditions incorporated herein by reference), without your consent, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets.

**15.2 Anti-bribery and Corruption.** The Parties warrant and represent that they and their Affiliates will not, nor will any of their respective officers, employees, shareholders, representatives, agents or contractors ( “ **Associated Parties** ” ) commit, authorize or permit any action in connection with the negotiation, conclusion or the performance of this Agreement or any related agreement which would cause the other Party and/or its Associated Parties to be in violation of any Anti-Bribery Laws. This obligation applies, inter alia, to illegitimate payments including facilitation payments to Public Officials or their associates, families or close friends.

**15.3 Export Control and Sanctions.** (a) The Parties shall comply with all economic sanctions and export control laws and regulations ("International Trade Compliance") applicable to the collaboration based on this Agreement, including the laws and regulations where products or services relating to this Agreement are available, and (for enterprise Customers) you represent to procure your Associated Parties compliance as the same. (b) You represent that, at the time of signing this Agreement, you are not subject to any sanctions or relevant program maintained by applicable government authorities, not a military related agency, and is not owned, controlled by, or acting for or on behalf of, one or more of such persons/entities.

Without limiting the foregoing, any violation of the above commitments and representations shall be a material breach of this Agreement.

**15.4 Non-Waiver.** A waiver of a breach or default under this Agreement shall not be a waiver of any subsequent default. Failure of either Party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

**15.5 Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired thereby.

**15.6 Force Majeure.** No Party hereto shall be liable for any delay or failure to perform its obligations under this Agreement resulting from a Force Majeure Event. The Party affected by the Force Majeure Event shall give notice forthwith to the other Party upon becoming aware of a



Force Majeure Event with such notice to contain details of the circumstances giving rise to the Force Majeure Event. If such delay or failure to perform due to a Force Majeure Event shall continue for more than thirty (30) days, then either Party shall be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event.

**15.7 Independent Parties.** Parties acknowledge and agree that they are dealing with each other under this Agreement as independent contractors. Nothing contained in this Agreement shall create or be deemed to create a partnership, agency, joint venture or the relationship of employer and employee between the Parties and no Party shall have the express or implied authority to bind or represent the other in any way whatsoever.

**15.8 Notices.** Any notice given under this Agreement from you to us shall be in writing and signed by or on behalf of your organization, and shall be served by delivering it personally or sending it by pre-paid recorded delivery to us at the address as set out in the Order Form, or an alternative address as otherwise notified to you in writing during the Term. Any notice given under this Agreement to you by us shall be in writing and:

15.8.1 You shall be responsible for ensuring that the contact information set out in your Account details is true, accurate, complete and up to date. We shall not be liable to you if you are unable to obtain any business notification, customer service, complaint handling, dispute coordination, technical support, etc from us in a timely manner because your contact information is untrue, inaccurate, incomplete, outdated or any other similar circumstances.

15.8.2 You acknowledge and agree that we shall be entitled to send notifications to you via one or more commercially feasible means, including without limitation to web announcements, emails, system messages, text messages, telephone calls, push notifications, etc. Such notice shall be deemed to be received by you after it has been sent.

**15.9 Amendments.** This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except in writing signed by a duly authorized officer or representative of each of the Parties hereto.

**15.10 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements and all previous undertakings, representations, warranties and conditions made or given by or on behalf of either Party to the other, relating to the subject matter of this Agreement, whether oral or written, express or implied. Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.