

## Terms and Conditions: Distributor Agreement

This agreement applies to business clients only. Non-business customers should visit [www.eatel.com/policies](http://www.eatel.com/policies) to access Provider's non-business policies.

This agreement supplements the "Master Service Agreement for Business Services" and the "Terms and Conditions: General" for those Clients receiving access to data center services. Clients who contract for business services should reference <https://www.venyu.com/terms-conditions> for all applicable policies.

The terms contained herein apply in addition to the terms provided in the "Master Service Agreement for Business Services" and the "Terms and Conditions: General." Where there is a conflict between the "Master Service Agreement for Business Services" and this specific set of terms specific to data center Distributor services, this document prevails. Where there is a conflict between the general terms set forth at <https://www.venyu.com/terms-conditions> including the terms set forth in the "Terms and Conditions: General" document, the data center Distributor-specific terms set forth below prevail.

### **DATA CENTER DISTRIBUTOR-SPECIFIC TERMS**

This Distributor Agreement (the "**Agreement**") is made effective between Provider and Client ("**Distributor**") as of the date of signature (the **Effective Date**) and shall remain in effect for the term specified on the Business Service Agreement which is made part of this Distributor Agreement by this reference.

WHEREAS, Provider is engaged in the development and sale of various IT products and services described on the Business Service Agreement(s) and desires to have Distributor sell and distribute the services, including certain third party software (the **Software**) and products, if any (the **products**), as identified on an applicable Business Service Agreement; and

WHEREAS, Distributor desires to market and sell the services and distribute the products.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. **APPOINTMENT.** Provider hereby grants to Distributor a non-exclusive right to market, offer and sell the services and distribute the products in continental United States of America (the **Territory**) during the term in accordance with the terms and conditions of this Agreement. Distributor is not granted any rights hereunder outside of the Territory. Distributor acknowledges that Provider and others may also market, offer and sell the services and distribute the products within or outside the Territory without restriction.

2. **SERVICES.** Provider may modify this Agreement to add or delete services to/from the scope of this Agreement by written notice to Distributor from time to time. In the event that Provider revises this Agreement to delete any services from the scope of this Agreement, such notice shall be effective no fewer than thirty (30) days from the date of such notice.

**3. REPRESENTATIONS & WARRANTIES.** Distributor represents and warrants that (a) it has the requisite power, authority and resources to enter into this Agreement and to perform its obligations pursuant to this Agreement; (b) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (c) it is not bound by any agreement or obligation (and will not enter into or assume any agreement or obligation) that could interfere with its obligations under this Agreement; (d) in connection with its obligations under this Agreement, it shall comply with all applicable Federal, state, local and foreign laws and regulations and has obtained all applicable permits, rights and licenses; and (e) it has duly executed and delivered this Agreement.

#### **4. DISTRIBUTOR OBLIGATIONS.**

4.1 In addition to all other rights and obligations created by this Agreement, Distributor shall throughout the Term:

(a) diligently use best efforts to market and offer the services to be provided by Provider and distribute the products to customers (**Customers**) that are both (i) located in the Territory and (ii) not affiliates of Distributor;

(b) maintain personnel trained on an ongoing basis with sufficient knowledge and technical competency to effectively market and resell the services and to adequately assist Distributor's Customer's personnel with the application and operation of the products;

(c) insure that its employees and agents comply with this Agreement and shall be responsible for the acts and omissions of its employees and agents;

(d) promptly report to Provider in writing all complaints of its Customers related to the services or the products;

(e) not sublicense, or allow any third party to sublicense, the products or sub-distribute, or allow any third party to sub-distribute, the services;

(f) use the Software provided by Provider to Distributor solely for demonstration, training and installation purposes subject to and in accordance with the terms and conditions contained in the applicable EULA, where applicable, located at <https://www.venyu.com/terms-conditions>, other links contained in such agreements, and the Acceptable Use Policy (the "AUP") or otherwise made available to Distributor, and the additional restrictions that: (i) Distributor will keep such Software in its possession at all times and not permit any parent, subsidiaries, affiliated entities or third parties to use the Software; (ii) Distributor shall not use the Software in the operation of a service bureau; and (iii) Distributor will discontinue use of such Software in the event of the termination of this Agreement for any reason and will destroy all copies of such Software and certify in writing that all copies have been destroyed;

(g) not damage the goodwill or reputation of Provider or disparage or misrepresent the services or the products in any manner whatsoever;

(h) immediately notify Provider in writing of any breach of any Distributor Customer Agreement (as defined in Section 4.2); and

(i) notify Provider in writing upon any material adverse change in Distributor's financial condition that puts into jeopardy Distributor's ability to make full and timely payment of any invoices according to stated invoice terms.

4.2 To the extent applicable, Distributor acknowledges and agrees to the terms and conditions of the EULA(s) associated with the particular services. Distributor may make up to one (1) archival copy of the Software, provided that the copies shall include the copyright and other proprietary notices of the owner of the rights in the Software. Distributor shall enter into a written agreement with each Customer (the **Distributor Customer Agreement**). In the event of any conflict between the provisions of this Agreement and the provisions of the Distributor Customer Agreement with respect to the arrangements between Distributor and Provider, such conflict shall be resolved in every instance in favor of the provisions of this Agreement. The Distributor Customer Agreement shall include provisions calculated to protect Provider and its licensors and shall include provisions substantially similar to the provisions contained in Sections 4, 6, 9-11 13.3 and 14 of this Agreement and shall include the following provisions of the Master Service Agreement: Disclaimer of Warranties, Limitation of Liability, and Exclusive Remedy; Liquidated Damages/Termination; Choice of Law/Venue; Notices; Force Majeure; Assignment; and Entire Agreement. Each Distributor Customer Agreement shall make reference to and incorporate the terms and conditions contained in the EULA. Each Distributor Customer Agreement shall contain provisions requiring each Customer to acknowledge and agree to the terms and conditions contained in the EULA. Each Distributor Customer Agreement shall (a) state that the licensor of the Software shall not be liable for any provision or component of the services, and (b) terminate upon termination of this Agreement (including the EULA). Upon termination of this Agreement for any reason, any Customer not then in breach of its Distributor Customer Agreement with Distributor shall have the right to negotiate a services Agreement for the services directly with Provider. Provider agrees to negotiate such agreements in good faith under reasonable terms and conditions.

5. **SUPPORT SERVICES.** Commencing on the Effective Date and continuing throughout the Term, Distributor shall provide Level One Support to Customers for the services and products that Distributor has distributed. Provider will provide Level Two and Level Three Support to Customers. Level One, Level Two and Level Three Support (**Support**) do not include the provision of or support for services or products other than the services and products. Support will be provided in English. Support will be provided Monday to Friday, from 8 a.m. to 5 p.m. CST, for the services and products as may be accessed by Customer. As used herein, **Level One Support** means support provided by Distributor including (a) receiving and acknowledging problems from Customers, (b) checking lists of known problems and workarounds, and (c) if the reported problem is known, giving the published answer to the Customer and helping the Customer implement the solution. **Level Two Support** means support provided by Provider including (i) isolating, identifying, and reproducing an unknown problem reported by a Customer, (ii) researching a workaround and/or solution to the problem, (iii) developing a workaround and/or fix, and (iv) dialing into a Customer system to implement a complex workaround or to apply a patch. **Level Three Support** means support provided by Provider including the use of commercially reasonable efforts to correct errors or malfunctions in the services or products reported by Customer and/or Distributor, in accordance with priority levels and associated time frames to be mutually agreed by the parties.

## 6. PROPRIETARY RIGHTS.

6.1 Ownership. This Agreement does not convey to Distributor any ownership rights in the services or products or any intellectual property rights embodied in the services or products by implication, estoppel or otherwise.

6.2 Proprietary Information. Each party will protect the confidentiality of the other party's Proprietary Information in the same manner as it protects its own Proprietary Information.

6.3 Restrictions on Use. Neither Distributor nor any Customer obtains any right to use, modify, duplicate or reverse-engineer any aspect of the Proprietary Information, the services or the products. Distributor shall, and cause its Customers to, not modify, translate, decompile, nor create or attempt to create, by reverse engineering or otherwise, the products supplied hereunder, or adapt the products in any way to create a derivative work.

7. **PROVIDER OBLIGATIONS**. During the Term, Provider shall:

(a) assist in providing services and products training for Distributor's sales and support staff;

(b) provide reasonable quantities of sales literature, manuals and other application publications at its cost to Distributor;

(c) provide Distributor with access to a version of the Software in object code format for demonstration, training and installation purposes; and

(d) upon Distributor's request and dependent upon availability of Provider's personnel, assist Distributor in making joint sales calls on Distributor's Customers or prospects.

8. **PRICING AND PAYMENT**.

8.1 Fees. During the Term, services will be provided by Provider at the applicable price (as amended and in effect from time to time hereunder), including any other fees for installation of the products, third party software and/or Support, specified in the Fee section of the applicable Business Service Agreement (the "**Fees**"), subject to the additional pricing and terms set forth in this Section 8. Fees are fixed for the Initial Term (as defined in Section 12) of this Agreement. Provider shall be entitled to amend any Fees or terms contained in this Section 8 upon prior written notice to Distributor, such notice to be delivered not less than thirty (30) days prior to the date upon which the adjusted Fee or term is to become effective, any such increase not to exceed five percent of the then current Fee.

8.2 Minimums. Commencing 30 days after the Effective Date, Distributor agrees to pay Provider a minimum monthly amount stipulated on each Business Service Agreement (**Monthly Minimum Payment**) until the expiration or termination of this Agreement. In the event the total amounts due to Provider for the purchase of services resold by Distributor for any month during the Term is less than the Monthly Minimum Payment, Distributor will pay Provider the Monthly Minimum Payment for such month. In the event the total amount due Provider for the purchase of services resold by Distributor for any month is more than the Monthly Minimum Payment, Distributor shall pay Provider the actual Fees for such services and any amounts in excess of the Monthly Minimum Payment may not be carried over or credited against the subsequent month's Monthly Minimum Payment. Any Fees payable by Distributor to Provider for installation of the products, third party software and/or Support shall not count towards Distributor's Monthly Minimum Payment.

8.3 Payment. Provider shall issue invoices on a monthly basis and payment shall be due within thirty (30) days of receipt of the invoice. At Provider's option, any payment not received by the due date shall be assessed a late fee from the due date until such date when all amounts have been paid in full and shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law. Distributor shall pay all taxes (excluding those related to the income of Provider), which may be levied or assessed in connection with this Agreement. Any Fees paid by Distributor for products are not refundable.

9. **LIMITATION OF LIABILITY**. IN NO EVENT SHALL PROVIDER BE LIABLE TO DISTRIBUTOR, ITS CUSTOMERS OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE MANUFACTURE, SALE, HANDLING, REPAIR, MAINTENANCE, OR USE OF THE SERVICES OR PRODUCTS, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS OR INTERRUPTION OF BUSINESS, IRRESPECTIVE OF WHETHER (A) SUCH LIABILITY IS PREDICATED ON CONTRACT, STRICT LIABILITY OR ANY OTHER THEORY OR (B) PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROVIDER'S LIABILITY EXCEED THE AMOUNT OF THE FEES RECEIVED BY PROVIDER FOR THE APPLICABLE SERVICES OR PRODUCTS IN THE 6 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO A CLAIM. PROVIDER AND ITS LICENSORS SHALL NOT BE LIABLE TO DISTRIBUTOR, ITS CUSTOMERS OR ANY THIRD PARTY FOR ANY COSTS, DAMAGES, LEVIES, OR OTHER MONETARY JUDGEMENT ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY DATA LOSS. PROVIDER IS NOT RESPONSIBLE FOR DATA THAT MAY BE REMOVED TOO SOON OR REMAIN STORED ON PROVIDER STORAGE SYSTEMS LONGER OR SHORTER THAN DISTRIBUTOR OR CUSTOMER RETENTION POLICIES. IT IS DISTRIBUTOR'S AND/OR CUSTOMER'S RESPONSIBILITY TO REVIEW THE ACTUAL DATA STORED BY PROVIDER ON A MONTHLY BASIS.

10. **INDEMNIFICATION**. Distributor shall at all times during the Term and thereafter, defend, indemnify and hold Provider, its shareholders, officers, employees, agents, affiliates, successors and assigns (together, *Indemnities*) harmless from and against all claims, suits, demands, damages, liability and expenses, including legal expenses and reasonable attorneys' fees, arising out of (a) the promotion, advertisement, marketing, sale, use or distribution of the services or products by or on behalf of Distributor (or its employees, agents or representatives); (b) any negligence or intentional misconduct by Distributor (or its employees, agents or representatives) in performing its obligations under this Agreement; and (c) Distributor's breach of its representations, warranties or obligations hereunder.

## 11. **WARRANTY**.

11.1 Limited Warranty. Provider's warranties and/or service level agreements with respect to each Service are as set forth in the applicable Business Service Agreement, Master Service Agreement, and associated policies located at <https://www.venyu.com/terms-conditions>. Provider's sole obligation and Distributor's sole remedy for breach of the foregoing warranty is (a) as specified in the applicable -Business Service Agreement, Master Service Agreement, and policies; and (b) to terminate this Agreement in accordance with Section 15. It is the sole and exclusive responsibility of Distributor and its Customers to determine the suitability of any and all services and products for Customer's intended purposes and uses. Customer's limited warranties with respect to (i) the Software are governed by the EULA; and (ii) the Equipment are governed by the applicable Business Service Agreement, Master Services Agreement, and policies as identified on the cover page of this Agreement.

11.2 EXCLUDED WARRANTIES. NO REPRESENTATIVE OF PROVIDER IS AUTHORIZED TO GIVE OR MAKE ANY OTHER REPRESENTATION OR WARRANTY OR MODIFY THE WARRANTIES SET FORTH IN THE MASTER SERVICE AGREEMENT IN ANY WAY EXCEPT IN A WRITTEN AMENDMENT OF THESE TERMS SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF PROVIDER WHICH MAKES SPECIFIC REFERENCE TO THESE TERMS.

12. **TERM**. This Agreement is made effective as of the date of signature (the *Effective Date*) and shall continue in effect until the termination of each and every Business Service Agreement. The term of a Business Service Agreement, and Distributor's rights to market and sell the services of products selected on that Business Service Agreement, shall begin on the effective date of the Business Service Agreement (the "**Services Effective Date**") and continue in effect for the term stated in that Business Service Agreement ("**Initial Services Term**"). Each Initial Services Term shall AUTOMATICALLY RENEW FOR ONE (1) YEAR TERMS (EACH AN "EXTENDED TERM") UNLESS ONE PARTY GIVES THE OTHER PARTY WRITTEN TERMINATION NOTICE AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE THEN EXISTING TERM. The Agreement Term and Services Term are subject to termination rights set forth in the Master Service Agreement. If Distributor terminates an ordered Service prior to the end of the then-current Services Term, Distributor will pay a cancellation fee equal to (i) the amount specified in the Master Service Agreement and (ii) all out-of-pocket costs incurred by or imposed upon Provider by any third party (e.g., ordered equipment or licenses) related to Distributor's early termination.

### 13. **TERMINATION**.

13.1 Termination for Convenience. Provider may terminate this Agreement for convenience upon thirty (30) days written notice to Distributor.

13.2 Termination for Cause. Upon violation of this agreement, the entire agreement may be terminated by Provider under the terms set forth in the Master Service Agreement. The "Liquidated Damages/Termination" provisions shall apply. Provider may opt to give Distributor written notice to correct performance of this agreement within 10 days prior to termination, but is not obligated to do so.

13.3 Effect of Termination on Proprietary Information. Upon any termination or expiration of this Agreement: (a) each party shall promptly return the other party's Proprietary Information.

### 14. **GENERAL PROVISIONS**.

14.1 Use of Marks. (a) Except as specifically permitted herein, Distributor shall not use Provider's trademarks, trade names or company names or any adaptation thereof in advertising or other public or promotional material or activity (including Internet web sites) without first obtaining Provider's prior express written permission. (b) Upon the termination of this Agreement for any reason Distributor will immediately cease all use of Provider's marks, trade names and company names. Distributor shall not, and does not, acquire any rights in any of Provider's trademarks by virtue of entering into this Agreement. (c) Distributor shall properly and fully notify Provider of any actual, threatened or suspected infringement of Provider's trademarks which come to the notice of Distributor, and Distributor shall at Provider's request and expense assist Provider with any proceedings in relation to such infringement.

14.2 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under the Agreement to any third party without the prior written approval of the other Party, which consent shall not be unreasonably withheld, except that either Party may assign this Agreement to an Affiliate or in connection with a merger, sale of stock and/or or sale of the assets. Any attempted assignment in violation of the foregoing will be void and of no effect.

15. **SERVICE LEVEL STANDARDS**. SLA" or "Service Level Agreements" mean the standards for performance, availability, reliability, quality and responsiveness that Provider will be required to meet in its performance of the services, as those standards are established pursuant to Annex 1 of Data Center Specific Terms located at <https://www.venyu.com/terms-conditions> other links contained in such agreements, incorporated herein by reference.