

Terms of Use

42Gears's Reseller/Partner Portal (the "Portal"), available at <https://cosmos.42gears.com/> is provided to allow Reseller/Partners to access 42Gears resources, submit opportunity registrations, and review current opportunities with 42Gears. These **Reseller/Partner Portal Terms and Conditions and Data Processing Addendum Agreement**, collectively ("Agreement") constitute a contract between **42Gears Mobility Systems Private Limited**, ("42Gears"), and You ("Reseller/Partner") by accessing or using the Portal, Reseller/Partner agrees to be bound by this Agreement and 42Gears's privacy policy located at <https://www.42gears.com/privacy-policy/>

The Terms and conditions on the Portal may be updated by 42Gears at any time, and Reseller/Partner hereby agrees to such updated terms by logging into the Portal.

1. PORTAL CONTENT

All information, data, content, or materials that may be found and accessed in the Portal, including but not limited to, customer information, registration information, account information, and user information (collectively "Content") are protected by privacy, confidentiality, trademark, service mark, copyright or other intellectual property rights or licenses held by 42Gears or third parties who have licensed such Content to 42Gears.

Subject to full compliance with the terms of this Agreement, 42Gears grants Reseller/Partner a non-commercial, non-exclusive, non-transferable limited right to access and use the Portal for Reseller/Partner's business purposes. Reseller/Partner acknowledges that all Content is provided "AS IS." 42Gears does not provide formal support via the Portal and makes no representations or warranties, express or implied, that the Content on the Portal is accurate, timely or complete. **42Gears grants Reseller the right to access and use the Services (42Gears products and services) collectively referred to as "Services", and subsequently to sub-license the same rights to Customers in the Territory for their own internal use, subject to payment of applicable fees and terms as mutually agreed between 42Gears and the Reseller/Partner. For the avoidance of doubt, Reseller's right to access the Customer's account shall be limited to instances where such access or use is necessary for the benefit of its Customers. Reseller is liable for its Customers' access to, and use of Services.** Use of any Content is at Reseller/Partner's own risk and 42Gears makes no promises, guarantees, representations or warranties regarding the Portal's availability. 42Gears reserves the right to monitor, delete, move, or edit any Content on the Portal, but is not obligated to do so. The license to use the Portal will terminate automatically in the event that Reseller/Partner ceases to be a Reseller/Partner of 42Gears, in 42Gears's sole discretion and in accordance with the terms set forth in the Reseller agreement mutually agreed between both the parties. The license to access and use the Portal granted in this Agreement may be terminated at any time by 42Gears, without notice to Reseller/Partner, in the event of a breach by Reseller/Partner of the Reseller Agreement. Except as expressly provided herein, Reseller/Partner may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any Portal Content.

While it is possible for Reseller/Partner to upload its own Content to the Portal, Reseller/Partner agrees that it is solely responsible for any activity associated with Reseller/Partner's account and any Content Reseller/Partner submits, posts, transmits, includes, links to or otherwise uploads to the Portal ("Upload(s)" and derivatives thereof). By

Uploading any Content to the Portal, Reseller/Partner hereby grants 42Gears an irrevocable, perpetual, non-exclusive, worldwide, fully-paid and royalty-free right and license to use, copy, modify, reproduce, translate and publish any such Content for 42Gears's business purposes (including, but not limited to, providing the Portal). All Uploads submitted via the Portal are hosted by a secure third party service provider i.e Amazon Web Services (AWS).

Reseller/Partner hereby assigns all intellectual property rights which includes any suggestions, idea, recommendations or other information related to 42Gears's products or services to 42Gears. In addition, Reseller/Partner agrees that 42Gears may use, copy, modify, reproduce, translate and publish such Content for any purpose and in any way, including implementation in its products or services. If you do not wish to grant 42Gears the rights set forth in this Agreement, do not Post any Content on the Portal or otherwise access the Portal. Reseller/Partner shall not, directly or indirectly: (i) alter or remove or permit a third party to alter or remove any Portal Content; (ii) use, remove or alter any 42Gears trademarks, logos, trade names, copyrights or other proprietary notices without 42Gears's express written permission; (iii) distribute copies of Portal Content Uploaded by 42Gears in any manner not explicitly permitted by this Agreement, (iv) Upload any infringing, offensive, fraudulent, harmful or illegal Content (including, but not limited to, viruses, disabling devices, trojan horses, or any code, files or programs that may modify, damage, interrupt, or compromise the functionality or security of 42Gears's systems or the Portal itself); or (v) modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from any 42Gears software, service, product or documentation (including, but not limited to, this Portal), or create or attempt to create a substitute or similar service or product through use of or access to the Portal or any information, data or materials related thereto. Reseller/Partner may receive links to third party services, websites or applications on the portal, 42Gears does not control, maintain or necessarily endorse any such third party services, websites or applications. Reseller/Partner expressly acknowledges and agrees that 42Gears is not responsible or liable for any such third party services. Reseller/Partner's correspondence and business dealings with third-parties found through the Portal are solely between Reseller/Partner and the third party.

Reseller/Partner acknowledges and agrees that the products and all other items such as software copies and documentation provided hereunder thereof constitute valuable trade secrets of 42Gears, or are Proprietary and Confidential Information of 42Gears, and title thereto remains in 42Gears. All applicable copyrights, trade secrets, patents and other intellectual property rights in the products and all other items provided hereunder are and remain the proprietary information of 42Gears. All other aspects of the products and all other items provided hereunder, including without limitation, programs, methods of processing and their interaction and unique programming techniques employed therein as well as screen formats etc shall remain the sole and exclusive property of 42Gears and shall not be sold, revealed, disclosed or otherwise communicated, directly or indirectly, by Reseller/Partner, to any person, company or institution whatsoever other than for the purposes set forth herein. It is expressly understood that no title to or ownership of the products, or any part thereof is hereby transferred to Reseller/Partner. All rights not expressly granted herein are reserved to 42Gears.

2. REGISTRATION

In order to register an opportunity, the opportunity must be a new Reseller/Partner-originated opportunity for 42Gears that was obtained through the direct assistance of Reseller/Partner. The opportunity registration as **an authorized Partner/Reseller of 42Gears** is contingent

upon written acceptance by 42Gears and the execution of a Reseller Agreement (refer link below) between 42Gears and Reseller/Partner along with the acceptance of the terms of this Agreement. Registration of an opportunity (Customer) shall be solely upon the Customer's acceptance to the *Data Processing Notice* acknowledged and agreed by the Customer at the time of granting access rights to the Reseller/Partner. The terms and conditions related to any successfully registered and closed opportunity will be governed solely by the Reseller Agreement (please refer the link) http://42gears.com/agreements/42Gears_reseller_agreement.pdf

Use and Manage Customer Account:

Reseller is liable to 42Gears for all activity occurring on its own and its Customers' accounts. Reseller/Partner in accordance to the terms of this Agreement, shall be able to access and manage the Customer's account which shall not be limited to deletion of data, access to data or management of license on behalf of its Customer. 42Gears shall not be liable under any circumstances for any/all such actions performed on Customer's account by Reseller/Partner.

Once You acknowledge the Customer as a registered opportunity in accordance to the terms stated under "Registration", You shall be accessible to all the account and device related information including but not limited to SIM details, Phone number, IMEI, IMSI, Serial number, MAC Address, Location, SMS/Call logs, App list, Remote wipe, Phone/Device details, Remote device management, Email ID and File explorer and/or any/all other information in relation to manage the account of your Customers.

Reseller shall, and ensure that Customers shall maintain confidentiality of any non-public authentication credentials such as User ID and Passwords etc. associated with their use of 42Gears's Services, and promptly notify 42Gears of any known or suspected security incidents or misuse of its accounts or authentication credentials.

Reseller is responsible for Customer Data (all data provided by the Reseller or its Customers in relation to use of the Services) and its content, and shall secure and maintain all rights and authorizations in Customer Data (including Personal Data) necessary for 42Gears to provide Services without violating laws or rights of any third party. Reseller and/or Customers (as applicable) shall retain ownership of all rights in and to all Customer Data.

3. CONFIDENTIALITY

The term "Confidential Information" means any information disclosed on the Portal, or otherwise from 42Gears, to Reseller/Partner in any form (written, oral, etc.) that is marked as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. Reseller/Partner and 42Gears both understand that 42Gears has or may disclose Confidential Information in connection with this Agreement, but that Reseller/Partner shall receive no rights in, or licenses to, such Confidential Information.

Reseller/Partner agrees to: (i) keep all Confidential Information, data or materials strictly confidential and not use or disclose any Confidential Information, data or materials to any third party, other than as explicitly permitted in this Agreement; (ii) ensure that any third party to

whom Reseller/Partner discloses Confidential Information in accordance with this Agreement keeps such information strictly confidential and does not disclose or use any Confidential Information except as permitted herein; (iii) keep Reseller/Partner's username(s) and password(s) that relate to the Portal strictly confidential; and (iv) not permit or allow any third party to use or access the Portal. All Confidential Information contained in the Portal shall be used for the sole purpose of conducting business with 42Gears.

The restriction to above section shall not apply to any Confidential Information to the extent that it: (i) comes within the public domain, other than through breach of this Agreement; (ii) is required or requested to be divulged by any court, tribunal or governmental agency with competent jurisdiction (provided that Reseller/Partner gives notice to 42Gears sufficient to allow 42Gears to contest any such disclosure and, in any event, only discloses that Confidential Information required to comply with such government order); (iii) Reseller/Partner can document that the information was known prior to the date of this Agreement; or (iv) becomes known to Reseller/Partner through methods outside any duty of confidence.

At any time upon 42Gears's request, and promptly upon any termination of this Agreement, Reseller/Partner will return to 42Gears, or provide written certification of the destruction of, all Confidential Information, including all Confidential Information contained in internal documents, without retaining any copy, extract or summary of any part thereof.

4. INDEMNIFICATION

To the extent permitted by law, Reseller/Partner agrees to indemnify and hold 42Gears harmless, at 42Gears's direction and request, from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with any of the following: (i) Reseller/Partner's access to or use of the Portal, including any Content Uploaded by Reseller/Partner via the Portal; (ii) Reseller/Partner's breach or alleged breach of this Agreement; (iii) Reseller/Partner's violation of any third party rights, including without limitation, any intellectual property rights, publicity, confidentiality, property or privacy rights; (iv) Reseller/Partner's violation of any laws, rules, regulations, statutes, ordinances or orders of any governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; or (v) any misrepresentations made by Reseller/Partner. Reseller/Partner will cooperate as requested by 42Gears in the defense of any claim. 42Gears reserves the right to assume the exclusive defense and control of any matter subject to indemnification by Reseller/Partner, and Reseller/Partner will not under any circumstances settle any claim without the prior written consent of 42Gears.

5. NO WARRANTY

THE PORTAL AND ANYTHING PROVIDED IN CONNECTION THEREWITH, ARE PROVIDED "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND. 42GEARS HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT. IN ADDITION, 42GEARS AND ITS SUPPLIERS DO NOT WARRANT THAT THE PORTAL WILL OPERATE WITHOUT ERRORS OR ARE FREE FROM VIRUSES, BUGS, WORMS OR ANY OTHER HARMFUL COMPONENTS, AND

42GEARS SHALL HAVE NO LIABILITY DUE TO ANY DAMAGES CAUSED BY THE SAME.

6. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY (EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW), IN NO EVENT WILL 42GEARS OR ITS SUPPLIERS BE LIABLE TO RESELLER/PARTNER (OR ANY PERSON CLAIMING UNDER OR THROUGH RESELLER/PARTNER) FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE OPERATION, USE OF OR ACCESS TO THE PORTAL, OR ANY CONTENT THEREON, THE DELAY OR INABILITY TO USE THE PORTAL OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (I) LOSS OF REVENUE OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT) OR (II) LOST BUSINESS OR (III) LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF 42GEARS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

7. Protection of Customer Data

Reseller is responsible for Customer Data and its content, and shall secure and maintain all rights and authorizations in Customer Data (including Personal Data) necessary for 42Gears to provide Services without violating laws or rights of any third party. Reseller and/or Customers (as applicable) shall retain ownership of all rights in and to all Customer Data.

Reseller/Partner shall implement reasonable security measures to protect Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized or unlawful disclosure or access. Customer Data is the confidential information of the Customer and 42Gears. In recognition of the foregoing, Reseller/Partner agree to:

- a. Keep and maintain all Customer Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure,
- b. Use and disclose Customer Data solely and exclusively for the permitted purposes and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Customer Data for Reseller/Partner's own purposes or for the benefit of anyone other than 42GEARS without 42GEARS's prior written consent.
- c. Reseller/Partner shall not, directly or indirectly, disclose Customer Data to any third party or person other than Reseller/Partner's authorized employees who have a need to know or otherwise access Customer Data to enable Reseller/Partner to perform Reseller/Partner's obligations under this Agreement (i) except and to the extent expressly required by applicable law, in which case, Reseller/Partner shall use best efforts to notify 42Gears/Customer before such disclosure or as soon thereafter as reasonably possible or (ii) without express written consent from 42GEARS, in which case, Reseller/Partner shall (1) be responsible for and remain

liable to 42GEARS for the actions and omissions of such third party concerning the treatment of Customer Data as if they were Reseller/Partner's own actions and omissions and (2) require such third party that has access to Customer Data to execute a written agreement agreeing to comply with the terms and conditions relating to the treatment of Customer Data.

8. Security of Customer Data

Reseller/Partner represent and warrant that Reseller/Partner's collection, access, use, storage, disposal and disclosure of Customer Data does and will comply with all applicable privacy and data protection laws, as well as all other applicable regulations and directives. Without limiting Reseller/Partner's obligations, Reseller/Partner agree that Reseller/Partner shall implement administrative, physical and technical safeguards to protect Customer Data that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which Customer Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

9. Data Processing:

With regard to Customer Data, in relation to provide Services to the Reseller for resale and distribution to the Customers of Reseller, Customer is the Data Controller, Reseller is the Data Processor and 42Gears is the Data Sub-Processor. 42Gears shall process Personal Data only on behalf of Reseller as is necessary for 42Gears to perform the Agreement, to render Services to Customers and in accordance with Reseller's instructions.

Reseller accepts, and ensures that its Customers accept, that 42Gears may have Personal Data processed and accessible by its Subcontractors outside Reseller's or Customer's country of domicile. In case the Reseller or any Customer is based within the European Economic Area ("EEA") and Personal Data is transferred to a Subcontractor in non-EEA country, which does not ensure adequate level of data protection according to applicable law, Reseller shall ensure that Customer obtains necessary consents of Personal Data subjects to the extent necessary for the transfer.

11. Security Incidents. To the extent permitted by law, 42Gears will notify Reseller of any unauthorized access to Personal Data of which 42Gears becomes aware ("Security Incident"), and such notification shall not be construed as an acknowledgment by 42Gears of any fault or liability with respect to the Security Incident. To the extent the Security Incident results from 42Gears's breach of the Agreement, 42Gears will use reasonable efforts to identify and remediate the cause of such Security Incident.

At a minimum, Reseller/Partner's safeguards for the protection of Customer Data shall include: (i) limiting access of Customer Data to Reseller/Partner's authorized employees who have a need to know or otherwise access Customer Data to enable Reseller/Partner to perform Reseller/Partner's obligations under this Agreement, (ii) securing business facilities, data centres, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability, (iii) implementing network, device application, database and platform security, (iv) securing

information transmission, storage and disposal, (v) implementing authentication and access controls within media, applications, operating systems and equipment, (vi) strictly segregating Customer Data from information of Reseller/Partner or Reseller/Partner's other customers so that Customer Data is not commingled with any other types of information, (vii) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law and (viii) providing appropriate privacy and information security training to Reseller/Partner's employees. Reseller/Partner agree to fully cooperate with 42GEARS in handling of the matter, including, without limitation: (i) assisting with any investigation, (ii) providing 42GEARS with physical access to the facilities and operations affected, (iii) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise reasonably required by 42GEARS. Reseller/Partner agree to take steps to immediately rectify any Security Breach and prevent any further Security Breach at Reseller/Partner's expense in accordance with applicable privacy rights, laws, regulations and standards. Reseller/Partner agree to reimburse 42GEARS for actual, reasonable costs incurred by 42GEARS in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.

Reseller/Partner agree to reasonably cooperate at its own expense with 42GEARS in any litigation or other formal action deemed necessary by 42GEARS to protect its rights relating to the use, disclosure, protection and maintenance of Customer Data. In the event of any Security Breach, Reseller/Partner shall promptly use reasonable efforts to prevent a recurrence of any such Security Breach.

12. SEVERABILITY AND ENTIRE AGREEMENT

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers, amendments and modifications must be in a writing signed by both parties and specifically reference the provision of this Agreement being waived, amended or modified, except as otherwise provided herein. No agency, Reseller/Partnership, joint venture, or employment is created as a result of this Agreement and Reseller/Partner does not have any authority of any kind to bind 42Gears in any respect whatsoever. Reseller/Partner shall conduct business in a manner that reflect favourably at all times on the Products and the good name, goodwill, and reputation of 42Gears. Reseller/Partner shall avoid deceptive, misleading, or unethical practices that are or might be detrimental or disparaging to 42Gears or its products. Reseller/Partner shall not publish or employ or cooperate in the publication or employment of any misleading or deceptive materials relating to the Products. Reseller/Partner shall make no covenants, representations, warranties or guarantees to end users or to the trade with respect to the specifications, features, or capabilities of the product which are inconsistent with the literature distributed by Reseller/Partner, or which are inconsistent with the then current 42Gears license agreement. Reseller/Partner will notify 42Gears immediately of any knowledge or suspicion of any violations of 42Gears's patents, copyrights, trademarks, or other proprietary rights.

13. GOVERNING LAW AND JURISDICTION:

Both parties expressly consent and agree that the Reseller Agreement shall be signed and executed separately between both the parties and shall be final and binding upon both the parties. The terms and conditions of the Reseller/Partner Portal and the Reseller Agreement shall be governed by and construed in accordance with the laws of the State of Karnataka and in the Courts at Bengaluru.

To download a version of the “42Gears Reseller Agreement” in PDF format, please click on the link: http://42gears.com/agreements/42Gears_reseller_agreement.pdf and share the Reseller Agreement after signing to **Partnerships@42gears.com**