



# **Daemon Solutions Ltd** trading as **Daemon**

&

**XXXXXX**

## **Master Services Agreement**

**[date]**

# Master Services Agreement

This Master Services Agreement is made between:

A **Daemon Solutions Limited trading as Daemon** a company incorporated in England & Wales (registration number 03442937) trading as Daemon whose registered office and trading address is at Paddington Clubhouse, Studio C, 21 Conduit Place, Paddington, London W2 1HS;

and

B **XXXXXXXXXXXX**, a **company** incorporated in England & Wales (registration number [no]) whose registered office and trading address is at **XXXXXXXXXXXX**

This document will govern the relationship between us.

## At a glance

1. **Our relationship** - the nature of our relationship including how we work, confidentiality and our obligations to each other.
2. **What we do** - the services we will provide and the legislative requirements we will always have in place.
3. **What we own** - the intellectual property rights we agree on.
4. **Your responsibilities** - what we require from you to provide you services.
5. **Charges and payment** - our agreement on how the work is charged and paid for.
6. **Our liability to you** - our limits of liability.
7. **Staff obligations and third parties** - to ensure we are fulfilling our obligations to our people, the laws governing anyone who works with us and agreeing to the non-solicitation of our people.
8. **Data protection** - how we agree to manage each other's personal data.
9. **Dispute resolution** - how we deal with any disputes that may arise.
10. **Ending our relationship** - the arrangements needed should we decide to end the relationship.
11. **General** - our mutual agreement to signing documents, giving each other notices, third party rights and acceptance of appropriate governing laws.

## 1. Our relationship

- 1.1. There are two key documents which apply to our relationship, this one and a separate statement of work, plus our signed mutual secrecy agreement (where applicable). This document sets out our ways of working and what we are responsible for. Each statement of work will set out the particular services you would like us to deliver. You must review a statement of work for each aspect of work you would like us to carry out, sign it and get it signed by us before we will undertake any work.
- 1.2. Only the terms set out in this document will apply to our relationship. No other terms will apply (including any standard terms you may use). In case of conflict, a statement of work overrides the terms set out in this document.
- 1.3. No variation of this document and/or a statement of work shall be effective unless made in writing and signed by our respective authorised representatives.

- 1.4. You acknowledge that we may offer our services to other companies but we confirm that we will not work with any other companies where such work would have a detrimental impact on our relationship with you. Outside of and/or in between each agreed statement of work, you are not obliged to offer us work and we are not obliged to accept it.
- 1.5. During our relationship you may share confidential information with us and you may become aware of confidential information about us. Unless we have signed a separate mutual secrecy agreement to govern the sharing of this information (which takes precedence over this document), we both agree to take reasonable steps to protect each other's confidential information from being shared or seen by other companies or individuals both during our relationship and for a period of 2 years afterwards, except where we are required to share it due to legal or regulatory requirements. We will tell each other if we become aware of any unauthorised access to such information or if we are asked to share it with anyone else for legal reasons.
- 1.6. If either of us is unable to perform our obligations set out in this document or a statement of work due to an event outside our reasonable control, we will agree to suspend our relationship until we are in a position to resume. If we cannot resume our relationship within 14 days, either of us may terminate the relevant statement(s) of work immediately on written notice to the other.

## **2. What we do**

- 2.1. We will provide services to you within the timescales agreed with you, using all reasonable skill and care and in accordance with your reasonable satisfaction. We do not give any other guarantees or promises regarding our services unless it would be unlawful to do so.
- 2.2. Our services are offered to you as a service provider on a fully contracted out basis. As such you recognise that:
  - (i) it is up to us how and where we deliver the services and we will not be subject to your control, direction or supervision;
  - (ii) we will organise our staff and other resources as we consider to be appropriate to deliver the services that have been contracted out to us (as agreed in each statement of work);
  - (iii) we will have responsibility for agreeing the specification and scope of the services (as set out in each statement of work);
  - (iv) we will have responsibility for ensuring the quality of the services performed (usually managed via a "Technical Lead" supplied by us); and
  - (v) we will benefit from, and bear the risk and responsibility in relation to, any staff who deliver the services at our direction and any work performed by them.
- 2.3. We have suitable insurance cover in place to cover the services we provide to you throughout our relationship.
- 2.4. We will ensure that throughout our relationship we will comply with all applicable laws in connection with delivery of the services, including anti-slavery and human trafficking laws, anti-bribery laws and anti-tax evasion laws.
- 2.5. We will produce and publish case studies detailing the services we provide to you. These case studies may be used for our promotional, marketing, or internal purposes. No confidential or proprietary information will be used without your prior written consent.

### **3. What we own**

- 3.1. (a) Except where we provide a managed service to you (which will be confirmed in the relevant statement of work) and subject to us retaining ownership of our know-how (see clause 3.1(b)), you will own the material and information we provide to you during the performance of the services provided you have paid our fees in full.  
  
(b) We will retain ownership of our experience, skills and knowledge (our "know-how") which we use to provide the services as these elements form part of our company's wider service offering which we use across all of our client relationships. We grant you a non-exclusive, royalty free, irrevocable, non-transferable licence to use our know-how solely in order to benefit from the services we deliver.
- 3.2. Where we provide a managed service to you, we will own the material and information produced as part of delivering the services and you may only use such material and information for the purposes we agree, and such purposes will be agreed between us in writing. In certain circumstances we will agree that you own the material we have produced for you, provided that you have paid us in full for the services we have delivered. If we agree to do this, we will confirm in writing to you the details of how and when ownership of the material will pass to you.
- 3.3. You must notify us if any other company contacts you to complain that services we have delivered to you affects their rights. We will be responsible for any claims made against you by other companies regarding ownership of materials or information we have provided to you.
- 3.4. You recognise that we gain valuable experience from delivering services to all of our clients which gives us the strong reputation we have today. We will continue to develop our ideas and techniques during our relationship with you to bolster our expertise and ways of working to continually improve what we do and we will retain all rights in the development of our services.

### **4. Your responsibilities**

- 4.1. You will promptly give us all information and material we ask for to help us provide the services. We may need help from your staff and access to your premises during our relationship and you agree to facilitate this if needed.
- 4.2. You must obtain and maintain for the entirety of our relationship all licences and consents, and comply with all applicable laws, as needed to enable us to deliver the services.
- 4.3. If you have specific policies and procedures which you need us to comply with as part of delivering the services then please provide copies of these to us promptly after signing this document.

### **5. Charges and Payment**

- 5.1. Each statement of work will set out the applicable fees and we will raise invoices on a monthly basis which are payable within 30 days of receipt unless we agree alternative arrangements with you directly.
- 5.2. You are not permitted to withhold or part-pay any sums due to us unless you have a genuine reason to dispute our invoice. If you wish to query an invoice, please send us full details in writing within 10 days of the relevant invoice date so that we can address your query promptly and we will follow the process set out in clause 9 to resolve your query. Our standard payment terms still apply whilst we address your query and once resolved, any sums due must be paid within the original 30 day payment period.

- 5.3. Where we have to estimate our fees, we may have to update our estimate if you provide incorrect information, if any specified dependencies / facilities are not available on time, or if any equipment you provide to enable delivery of the services fails to operate correctly.
- 5.4. You are responsible for paying all other third party fees and taxes (including bank charges and fees for international transfers) associated with your use of the services we deliver.
- 5.5. We may charge you interest at four (4%) per year above the Bank of England's base rate from time to time if you do not meet our agreed deadlines for payment.
- 5.6. We may suspend the services if sums payable to us remain outstanding after the due date for payment, provided we have notified you of the sums due and given you 10 days to settle those outstanding amounts.
- 5.7. We may review and update our charges and rate card for services we provide on an annual basis. We will give you reasonable notice of any changes to our charges, and if such changes are not acceptable, we will seek to find a suitable solution through the dispute resolution procedure set out in clause 10 below. Our charges will remain unchanged whilst we seek a resolution.

## **6. Liability**

- 6.1. Neither of us limits our liability in a way which is unlawful, including any liability for death or personal injury caused by negligence and fraud or any other liability which cannot legally be limited.
- 6.2. Subject to clause 6.1, you will be liable for any claims or losses which arise as a result of your failure to comply with your obligations in this document or your negligence or willful default. Your total aggregate liability to us is capped at the higher of (a) £1,000,000, and (b) 150% of the total sums payable under the relevant statement of work which gives rise to the claim.
- 6.3. Subject to clause 6.1, our liability to you in connection with our services or the terms set out in this document is limited as follows:
  - (i) We have no liability arising from your use of our services for any loss of revenue or profit, loss of goodwill, loss of customers, loss of anticipated savings, damage to reputation or any indirect, consequential or special loss;
  - (ii) For loss or corruption of your data, our liability will be limited to £5,000,000; and
  - (iii) Our total aggregate liability to you in any circumstances other than those covered by clause 6.3(ii) is capped at the higher of (a) £1,000,000, and (b) 150% of the total sums payable under the relevant statement of work which gives rise to the claim.

## **7. Staff obligations and third party rights**

- 7.1. It is not our intention to create any employee/employer relationship between you and any individual acting on our behalf who performs services we have agreed to provide on a contracting out basis.
- 7.2. As we are the service provider, we have the role of client for the purposes of off-payroll working rules (as set out in chapter 10 of Part 2 of ITEPA 2003). We are therefore:
  - (i) solely responsible (where appropriate) for determining the status of any contractors working for us in the delivery of the services via a personal services company;

- (ii) solely responsible (where appropriate) for issuing a status determination statement to any contractors working for us in the delivery of the services via a personal services company; and
  - (iii) solely liable (in the unlikely event that we deem the arrangement to be within the scope of the off-payroll working rules) for operating PAYE and meeting any tax and national insurance contributions arising in respect of payments made by us to any contractors working for us in the delivery of the services.
- 7.3. Some of our contractors work for us via umbrella companies and they may require certain information under the Agency Regulations 2010 (AWR 2010) (which we do not think applies to this contracted out provision of services but which some umbrella companies routinely require). On this basis:
  - (i) following a request from us, you will provide confirmation as to whether you engage a staff member to do similar work and, if so, what pay, commission, bonuses, hours of work and annual leave that staff member is entitled to within 7 days of our request. You agree that we can pass this information onto the relevant umbrella company on a confidential basis for the sole purposes of complying with the AWR 2010;
  - (ii) we will be responsible for any liability, cost or claim you may face as a result of a breach or alleged breach by us of the AWR 2020, save to the extent that you are liable for the same (which includes a failure to respond to a request by us under clause 7.3(i)); and
  - (iii) if either of us becomes aware of a breach of the AWR 2010 in relation to our supply of a worker to you, we will share full details with each other within 7 days of becoming aware of such breach. We shall work together to address the breach, providing relevant information and complying with any reasonable requests to formulate a response.
- 7.4. You warrant that no individual's contract of employment will transfer to us as a result of TUPE, on the entry of the parties into this document.
- 7.5. Neither of us will employ, engage, or otherwise solicit any person who during the previous 6 months was an officer, employee or subcontractor of the other and with whom such party had material contact in connection with services performed under any statement of work, until 6 months after that statement of work has terminated.

## **8. Data Protection**

- 8.1. We will each ensure that we have all necessary and appropriate consents and notices in place to enable lawful sharing of any personal data for the duration of our relationship.
- 8.2. In circumstances where, for the purposes of data protection law, one of us is the data controller ('DC') and the other is the data processor ('DP') the rest of this clause shall apply.
- 8.3. Where personal data is processed by the DP, the DP shall:
  - (i) process such personal data in accordance with the written instructions of the DC;
  - (ii) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing or accidental loss or destruction of such personal data;
  - (iii) not transfer such personal data outside of the European Economic Area without the prior written consent of the DC;
  - (iv) assist the DC, at the DC's cost, in responding to any requests relating to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (v) delete such personal data at the end of our relationship unless required to keep a copy by law; and
  - (vi) maintain complete and accurate records to demonstrate its compliance with this clause.
- 8.4. The DP shall not appoint any third party to process personal data without the DC's prior written consent and in such circumstances the DP shall remain fully liable for all acts or omissions of any third-party processor appointed by it under this clause.
- 8.5. Where we are the DP, you recognise that we have a delivery centre in South Africa (Daemn South Africa PTY LTD) that will process personal data.

## **9. Dispute Resolution**

- 9.1. We hope that we can resolve any issues which arise during our relationship amicably by referring disputes to our respective operational managers for a mutually agreeable resolution without recourse to legal action and/or bringing our relationship to an end.
- 9.2. The existence of a dispute does not relieve either of us from continuing to comply with the terms of this document or the relevant statement of work whilst we seek to resolve the dispute.
- 9.3. If the operational managers cannot find a resolution to a dispute within 10 working days of a dispute being referred to them, they will refer such dispute to their respective senior leadership teams for resolution. If no resolution is reached within 10 working days of such referral, we will both participate in mediation prior to taking legal action.
- 9.4. Mediation will be administered by the Centre for Effective Dispute Resolution (CEDR) in accordance with the CEDR Model Mediation Procedure, and unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing to the other party (an ADR notice) and mediation must commence within 30 days of service of the ADR notice.

## **10. Ending our relationship**

- 10.1. Either of us may terminate our relationship at any time when there is no current statement of work immediately on written notice.
- 10.2. Either of us may terminate a statement of work at any time on 30 days' written notice, unless the statement of work itself says otherwise.
- 10.3. Either party may terminate this Agreement and any current Statement of Work at any time if the other is in material breach or if the other becomes insolvent, by immediate written notice.

## **11. General**

- 11.1. All relevant paperwork may be signed by electronic signature (whatever the form the electronic signature takes) which will bind us in the same way as manuscript signatures.
- 11.2. Any formal notices required to be given to each other in connection with this document will be delivered to our respective addresses at the top of the first page of this document unless we notify each other of an alternative address. Notices will be deemed to be delivered 2 working days after the date they are issued.
- 11.3. Where either of us is required to acknowledge, approve or consent to actions by the other (whether formal or informal) during the course of our

relationship, we must do so without undue delay to minimise any disruption to delivery of the services or our relationship.

- 11.4. Anyone who is not named as a party to this document has any rights created in respect of the content of this document or any statement of work.
- 11.5. Neither of us may transfer, delegate or subcontract its rights and obligations under this document without the prior written approval of the other party.
- 11.6. These terms and any disputes or claims between us will be governed by the laws of England & Wales, whose courts shall have sole jurisdiction in relation to all matters arising.

**EXECUTED BY THE PARTIES' AUTHORISED REPRESENTATIVES AS FOLLOWS:**

**On behalf of XXXXXXXX**

**On behalf of Daemon**

Print name:

Print name: Jane Lockwood

Title:

Title: Chief Operating Office

Date:

Date: