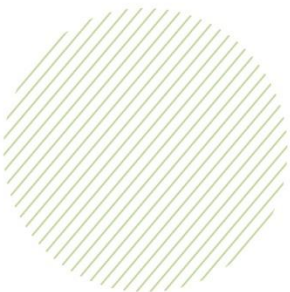




**IT LABS**

# **Terms and Conditions**

**May 2024**



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## 1. General

These General Terms and Conditions contain the contractual structure for the provision of services by IT Labs to Client, subject to applicable negotiations or mutually agreed modifications.

## 2. Agreement

**Services.** The Contractor provides and the Client may purchase one or more of the following services:

1. Software Development
  - a. API Development
2. Quality Assurance
  - a. Strategic QA Planning
  - b. Software Testing
  - c. Performance Testing
  - d. Penetration Testing
  - e. Test Automation
3. Security
  - a. Security Consulting
  - b. CISO as a Service
  - c. Microsoft 365 Security & Compliance
4. Managed Services
  - a. Cloud Migration
  - b. IT Infrastructure
  - c. DevOps Practice

**Confidentiality.** Each Party acknowledges and agrees that the names and addresses of the other Party's customers and prospective customers (collectively referred to herein as "**Customers**" and further defined herein as all customers that a Party sells or actively solicits to sell the goods and services provided by the Party) and all other confidential information relating to those Customers, including but not limited to all information such as information on the profitability and/or profit margins of a Party, Customer lists and potential leads, any other information relating to a Party's Customers that has been obtained or made known to the other Party solely as the result of providing or receiving services under this AGREEMENT (whether or not patentable or registered under copyright or similar statutes), or any other confidential information regarding the manner of business operations of a Party are provided in confidence and constitute "**Confidential Information**." Each Party will hold all such Confidential Information of the other Party in confidence and not reveal same to any person or persons absent express written approval to do so from the other Party. During the Contractor's engagement, each Party has or will be exposed to and/or provided with confidential information relating to the operation of the other Party's business and its customers that constitutes "**Confidential Information/Trade Secrets**" and each Party agrees that maintaining the confidentiality of such matters is a material condition of this AGREEMENT. **The Parties may agree to conclude separate Non-Disclosure Agreement for the purpose of their specific cooperation.**



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**Engagement, Service Schedules and Contractor Fees.** Client hereby engages Contractor to provide services along the timeframe, pricing structure and deliverables parameters detailed in Schedule(s) to be appended hereto from time to time and which shall be deemed incorporated herein by this reference.

**Term/Contracting Period.** Unless sooner terminated as provided below, the Term or Contracting Period of this Agreement shall commence on the Effective Date and continue unless terminated by one of the Parties, or otherwise agreed in writing.

**Payment Terms.** The full amount of each of Contractor's invoices to Client must be processed, paid and received into Contractor's accounts along the timeline specified on each active Schedule and any attached Exhibits (i.e. a Statement of Work ("**SOW**")). General payment terms in 30 (thirty) days from issued invoice. The Parties may mutually agree in writing on payment terms in instalments or with advanced payment. Overdue payment may be subject to interests pursuant to applicable law, collection and/or enforcement claims or suspension of services without liability on Contractor's side.

**Termination.** This AGREEMENT may be terminated as follows;

- a. By Contractor if Client is in material breach of the AGREEMENT for non-payment or delayed payment.
- b. By a lawful party if the other party is in material breach of the AGREEMENT and fails to remedy such breach within 15 days after written notice is delivered by the lawful party to the breaching party.
- d. By either Party without liability on its part, by written notice to the other Party if such Party, where applicable, becomes insolvent, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- e. By either Party if the other Party ceases carrying on its business for any reason.

**Effects of Expiration, Termination or Suspension.** Unless specified to the contrary in other provisions of this AGREEMENT, upon expiration, termination or suspension (as applicable);

- a. Both Parties will return all Confidential Information or other proprietary material relating to the services rendered during the Term; and
- b. All outstanding amounts payable to Contractor or invoiced to Client pursuant this AGREEMENT which have not been paid shall immediately become due and payable and any performed services by Contractor prior to the date of termination is billable and is deemed approved.
- c. In the event of termination under the Payment Terms, all services will cease and team resources will be assigned to other projects and clients, without any liability by Contractor towards the Client. In the event services are suspended but not terminated, Contractor will not assign personnel to other projects for 15 days, upon which period, Contractor shall have the right to assign personnel to other projects and clients and in the event that services resume, Contractor will then offer new personnel to Client at that time.

**Independent Contractor Relationship.** Client and Contractor expressly agree and understand that they are creating an independent contractor relationship and that neither Contractor nor any employee or other resource of Contractor shall be considered an employee of Client for any purposes whatsoever.

**Data Protection.** If the performance of the obligations of this AGREEMENT and its Schedules requires process of personal data, each Party shall have all permissions necessary to do so from the other Party and each Party agrees that such information will only be processed in strict compliance with the provisions of applicable Data Protection legislation. Each Party also undertakes not to do or permit anything to be done which might jeopardize or contravene the responsibilities under any data protection, equal opportunity or anti discriminatory legislation in any jurisdiction. When a Data Processing Agreement ("**DPA**") is required to be signed between the Parties, the Parties shall conclude such DPA in writing, which shall take precedence over the provisions of this



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AGREEMENT for the subject matter of processing Personal data. The provisions of this paragraph shall survive termination of this agreement.

### **Warranties.**

- a. Contractor warrants that:
  - i. it has taken all necessary corporation actions to authorize and approve the execution and delivery of this AGREEMENT ;
  - ii. it has good and sufficient capacity, power, authority and right to enter into, execute and deliver this AGREEMENT , to complete the transactions contemplated hereby and to duly observe and perform the covenants and obligations contained herein;
  - iii. all information, materials, Pre-Existing Work and Developed Tools are owned by or controlled by Contractor at the moment of use during the provision of services and Contractor represents that no such information, materials, Pre-Existing Work or Developed Tools infringes upon the copyright, trade secret, patent or other intellectual property rights of any third party.
- b. Client warrants that:
  - i. it has taken all necessary corporation actions to authorize and approve the execution and delivery of this AGREEMENT ;
  - ii. it has good and sufficient capacity, power, authority and right to enter into, execute and deliver this AGREEMENT , to complete the transactions contemplated hereby and to duly observe and perform the covenants and obligations contained herein;
  - iii. all information, materials, direction or instruction provided to Contractor under the AGREEMENT by Client (written or otherwise) is owned or controlled by Client at the moment of such delivery to Contractor and Client represents that no such information, materials, directions or instructions infringes upon the copyright, trade secret, patent or other intellectual property rights of any third party.

**Taxes.** All amounts payable according to this AGREEMENT are payable net of and expressly exclude any and all applicable value added taxes ("VAT"), sales, use or other taxes, duties and fees if any, relating to the sale, purchase, transfer of ownership, delivery, installation, license or provision of any Services under this agreement, which shall be charged separately and which Client agrees to pay in full. All invoices shall be in a form to allow Contract to reclaim VAT where possible.

All amounts payable according to this AGREEMENT are payable net of and expressly exclude withholding taxes if any (i.e. without deduction of any such withholding taxes) and any such withholding taxes imposed on any amounts due to Contractor under this agreement. The Parties undertake obligation to use all efforts to support the other Party in reclaiming any such withholding taxes with delivery and submission of any required documentation or certificate by any respective, applicable taxing authorities.

**Indemnification.** Either Party hereby agrees to indemnify, defend and hold harmless the other Party and any parent, subsidiary, or affiliate thereof, and all directors, officers, attorneys and employees of such party (collectively, "Indemnitees") from and against all direct demands, claims, actions or causes of action, assessments, losses, damages, judgments, arbitration awards, liabilities (whether absolute or accrued, contingent or otherwise), costs and expenses, including, but not limited to, interest, penalties, and attorneys' fees and expenses imposed upon Indemnitees by reason of or resulting from the breaching party gross negligence, fraud or willful misconduct.

The provisions of this paragraph shall survive termination of this AGREEMENT.

**Non-Solicitation Covenant.** Unless otherwise agreed between the Parties in writing, and to the extent reasonably applicable, during the Term and for two (2) years following the termination or cessation of the last Schedule under which Contractor provides services under this AGREEMENT : (a) Neither Party shall directly or indirectly solicit or attempt to solicit any of the other Party's Customers



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for purposes of providing products or services that are competitive with those provided by the other Party; and (b) Neither Party shall directly or indirectly solicit or attempt to solicit any of the other Party's employees or independent contractors or vendors who have performed work for and/or were in communication with the Client or Contractor as its workforce pursuant to this AGREEMENT and any of its Schedules, for purposes of providing products or services that are competitive with those provided by the other Party or otherwise to secure the services of such personnel as employees, consultants or contractors.

**Ownership.** Upon Contractor's receipt of payment for all deliverables and Services, the ownership of all final deliverables provided to Client from Contractor as specified on the applicable Schedule, including all rights, title, and interest in and to the final deliverables (collectively "**Rights**") shall become the property of Client except as may be expressly stated to the contrary in any applicable Schedule. If any deliverables is required to contain any pre-existing work or independently developed tools by contractor or a third party, including open source ("**Third Party Works**"), such Third Party Works shall be agreed to be implemented, licensed and/or charged additionally between the Parties in writing, depending on the scope and requirements of the particular project and solution deliverable.

**Notice.** Any notice, request, demand, or other communication required or permitted to be given hereunder shall be in writing and sent via the channel agreed between the Parties, additionally in writing.

**Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOSS OR REVENUES OR PROFITS. CONTRACTOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY REASON WHATSOEVER AND FOR ANY CAUSES OF ACTION ARISING IN RELATION TO THIS AGREEMENT SHALL BE LIMITED TO CONTRACTOR'S SUBMITTED INSURANCE ON [NAME OF PLATFORM WHERE IT LABS PROVIDE INSURANCE AS VENDOR], HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO CONTRACTOR'S GROSS NEGLIGENCE OR INTENTIONAL WRONGFUL ACTS.

**Force Majeure.** Except for Client's payment obligations under this AGREEMENT, neither Party shall be liable for any delay or failure to perform any material obligation under this AGREEMENT if the failure is due to an event beyond its reasonable control which is defined under applicable law as a Force Majeure event. The Force Majeure events referred to in this paragraph include, but are not limited to; labor strikes (either internal or external), war, terrorist attacks, lock-out, epidemic, pandemic, blockage of means of transport or of supplies for whatever reason, earthquake, fire, storm, flood, water damages and governmental or legal restrictions. Except for Client's payment obligations under this AGREEMENT, in the event a disruption or interruption of services under the AGREEMENT through any Force Majeure event continues for more than 60 days, either Party shall have the right to terminate this Agreement with a 10-day written notice. Prior to issuing such notice, the Parties agree to negotiate the parameters of such termination and continued business operations, if applicable. Notwithstanding anything to the contrary herein or otherwise in this AGREEMENT, the Client shall remain obligated to make payment of all amounts due and owing to Contractor including but not limited to invoices then outstanding.

**Governing Law and Dispute Resolution.** The provisions of this AGREEMENT shall be governed by and construed in accordance with the laws of England and Wales. Any disputes between the Parties shall first be attempted to be resolved mutually and in amicable manner, however if such approach does not result in mutually acceptable solution, any such dispute shall be finally resolved by the courts of England and Wales or in case parties mutually agree in writing, by independent arbitral center for alternative commercial dispute resolution.

**Entire Agreement:** This AGREEMENT which is inclusive of the attached and/or appended Schedules and any additional or further Exhibits attached hereto or thereto constitutes the entire agreement between Client and Contractor regarding the subject matter hereof and supersedes any and all prior or contemporaneous agreements regarding these issues. This AGREEMENT contains a series of separate covenants. If any separate covenant, word or provision of this AGREEMENT is found unenforceable it may be severed from this AGREEMENT with the remainder of the AGREEMENT remaining in full force and effect. This AGREEMENT may be executed in counterparts and transmitted by electronic means, a copy of which shall constitute an original.



### 3. Development Services Schedule

The Development Services Schedule ("DSS") regulates the specific scope of services and conditions under which a particular project shall run. The terms and conditions in a DSS may be mutually agreed to be supplemented and modified by the parties.

1. **Scope of Services:** The Services that Contractor shall provide to Client based on this DSS and any subsequently issued Statement of Work (each a "SOW"), shall conform to the following:
  - a. Contractor provides Client with an ongoing software development, quality assurance, security and managed services (as listed in 2. Agreement – Services) and Client may choose which service to buy. The development process may include work performed by programmers, quality assurance testers, graphic designers, technical directors, art directors, project managers, tech support, system admin, customer support and any available technologies that Contractor has at its disposal based on the needs of execution of this this DSS and any SOW. Any or each of the personnel types specified above may be referred to herein as "Talent."
  - b. Contractor will assist in deploying the platform in the cloud or a hosted solution on agreed hosting account provided by the Client.
  - c. Contractor will provide Talent with the necessary competency to perform software development in mutually agreed technologies.
  - d. Contractor will report to Client's designated representative who shall have the authority to make immediate or otherwise timely decisions (in Contractor's discretion) on the Scope of Services and deliverables.
  - e. Contractor will follow all mutually agreed project and code management policies and procedures.
  - f. Contractor will attend agreed daily and weekly meetings.
  - g. As may be required to provide services under this this DSS and any SOW, Client shall provide VPN access to development, testing, production environment, access to all relevant project documentation and specifications, source code, relevant license for the licensed software, hardware and all other working conditions needed for the successful accomplishment of the Services performed by the Contractor, before the actual commencement of the Services and access, equipment and relevant software needed for onsite work, in case applicable. All activities performed by Contractor's personnel on any Client system will be logged and monitored by the Client according to Client's preference.
  - h. Each request from Client for Talent from the Contractor shall be specified in a SOW with details including but not be limited to: project name; start date; development period; Talent positions or personnel type required; utilization percentage for each identified resource; and overall utilization terms and conditions.
2. **Dedicated Time:**
  - a. Contractor allocates dedicated billable hours for the Client's needs on a daily or monthly basis as defined in each SOW. Both management and technical Talent (for oversight and work delivery) will be assigned to each project and all such time is billable.
  - b. Local vacation, allowed sick leave per local labor law and days off, as well as statutory holidays are considered dedicated not-billable time. For the purposes of this SOW, "Local" means the location where Talent is/are physically located when providing services.
  - c. Local statutory holidays, days off and sick leave are effective immediately.





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- d. Unless otherwise agreed with Client, no specific Talent may take more than ten (10) consecutive business days as vacation days. Any planned Talent vacation must provide notice to Client 10 days prior to the start of any such vacation.
- e. Time required to train replacements for any Talent is billable except when such replacement was made at Client's request following submitted written complaints and evidence of non-performance regarding specific person or persons. In all cases, onboarding shall be achieved in two (2) weeks or less.
- f. All Onsite Travel costs must be pre-approved by Client in writing. Client shall bear all costs and expenses for such Onsite Travel, including travel, food, accommodation, per-diem wage and out of pocket expenses made and shall pay an estimated amount for such Talent in advance, based on Contractor's reasonable and customary estimates. Once the travel is completed, the Contractor shall present receipts of costs incurred and the Parties shall reconcile accounts. "Onsite Travel" means travel greater than 30 miles outside the location of Talent's primary residence.
- g. The Client is aware and acknowledges that the Contractor has a policy of rotating Talent among various projects on a periodic basis. Contractor may decide, without any liability towards Client, to rotate and replace any Talent who has worked on one or more Client project(s) for an aggregate of 12 months or more. Such rotation replacement shall not be deemed breach of this Agreement, the AGREEMENT, DSS or applicable SOW. To minimize the impact of such rotation on the Services, other Talent shall be introduced in the Services and to the Client, who will receive adequate training needed to replace the respective Talent who rotates, in order to provide the same level of Services. In case of such rotation, the Contractor shall cover any cost incurred because of the rotation process, including knowledge transfer for the new Talent. Client shall be notified of any rotation steps and Contractor shall use good faith efforts to coordinate same with Client.
- h. In the event regulatory requirements are an element of the Services on any particular project or within any SOW, including a requirement for a work permit for any onsite work, the Parties shall cooperate to ensure compliance and agree in writing on the applicable division of responsibilities and costs to achieve any such compliance.

### 3. **Business Hours; Overtime:**

- a. **Business Hours** shall be determined additionally according to the service scope that the Client will select.
- b. **Overtime** work is work requested outside of the determined business hours and can appear from time to time and must be mutually agreed and consistent with all local labor laws for overtime and local labor law statutory non-working days rules. Any Client's request (with email to suffice) for increase of the overtime work per person or in total, or when requesting that Services be provided outside of Business Hours, must be pre-approved by Contractor in writing (e-mail shall suffice).
  - i. Client must provide such notice to Contractor no less than 72 hours prior to the commencement of such work.
  - ii. Overtime work, work on holidays and weekends is additionally chargeable and the rate shall be regulated additionally, applicable to the engaged particular Talent and the applicable labor laws.
- c. **Reports**: Contractor shall provide a monthly timesheet breakdown report ("**Report**") to Client upon end of each month.

### 4. **Change Requests:**

- a. In the event that the Client requires a modification to a previously approved requirements specification (whether a request constitutes a modification shall be determined by Contractor in its sole discretion) or should unexpected situations occur during the development process which will result in a change in the delivery time or pricing, Contractor will provide an estimate for the completion of the work to the modified specification or to address the unexpected situation (each a "**Change Request**").





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- b. The Client may approve or reject such Change Request. If approved, Contractor will proceed to implement the work specified in the Change Request.
  - c. If rejected, Contractor will re-commence work at the same pace and on the same requirements specifications in force prior to the Client's request for change.
  - d. Contractor's required delivery timeframe will be adjusted with a day for day addition of time that lapsed between the time the request for change was received and the Client's approval or rejection of same.
- 5. **Contractor Service Fees and Payment Schedule:**
  - a. **Daily or Monthly Service Fees per Talent:**
    - i. Service Fees are specified in the Table specified in the applicable SOW.
    - ii. Services Fees are payable net and any taxes shall be regulated and applied per AGREEMENT provisions.
  - b. **Payment Schedule:**
    - i. If not otherwise agreed between the Parties in writing, Invoicing shall be made by Contractor in monthly basis and due for payment within 30 (thirty) days from electronic receipt of invoice.
    - iii. Notwithstanding anything to the contrary in the AGREEMENT, no termination by Client will be effective until Contractor receives payment in full for all amounts invoiced through the effective date of termination.

## 4. Statement of Work

The Statement of Work ("SOW") represents an integral part of a particular DSS and regulates the specifics of each separate order under such DSS.

All provisions of the DSS, as integral part of the AGREEMENT, shall also apply to this SOW-xx. Any conflicted provisions the DSS and this SOW-xx shall be resolved by reference to this SOW-xx.

- 1. **Name of Project:** \_\_\_\_\_
- 2. **Start date:** \_\_\_\_\_
- 3. **Development Period/Term:**
  - a. Initial guaranteed duration period of this SOW shall be XX months from the Start date ("Initial Term") after which either party may terminate this SOW with XX days written notice.
  - b. The Initial Term shall be automatically extended for additional, consecutive XX month periods until terminated by either Party upon XX-days written notice prior to the end of any such period.
- a. **Utilization:** The utilization of the engaged Talent team will be defined according to mutually agreeable terms between the parties, depending on the number of talents engaged and engagement period duration, in mutual agreement with the Client.
- 5. **Talent:**



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TALENT TYPE	DAILY / MONTHLY RATE	# OF INDIVIDUAL TALENT	UTILIZATION (%)
Team Lead / Architect			
Senior Developer			
Developer			
Senior Quality Assurance			
Project Manager			
Business Analyst			