



# **Master Services Agreement**

**STANDARD TERMS AND CONDITIONS**

## BACKGROUND

- (A) The Supplier is in the business of providing software and services to assist customers with managing approval processes.
- (B) The Customer agrees to obtain, and the Supplier agrees to provide the Services and Software on the terms set out in this agreement.

## Agreed terms

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions.

**Applicable Laws:** all applicable laws, statutes, regulations from time to time in force.

**Change Order:** this has the meaning given in clause 5.1.

**Charges:** the sums payable for the Services, as set out in [Charges Section].

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in [Deliverables Section].

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 4.1(b).

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deliverables:** the Software any output of the Services to be provided by the Supplier to the Customer as specified in [Deliverables Section], and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use,

and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Milestones:** a date by which a part of the Services is to be completed, as set out in **Schedule 1**.

**Parties:** means the Supplier (iThink 365) and the Customer.

**Services:** the services as set out in **Schedule 1**, including services which are incidental or ancillary to such services.

**Software:** the software developed by the Supplier as part of the Deliverables as detailed in Schedule 1.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services including any such items specified in **Schedule 1**, but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax chargeable in the UK or elsewhere.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to **writing** or **written** includes fax and email.

## **2. Commencement and duration**

- 2.1 This agreement shall commence on **[DATE]** and shall continue, unless terminated earlier in accordance with clause **12** (Termination) until the Services and Deliverables have been delivered.

2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement.

### **3. Supplier's responsibilities**

3.1 The Supplier shall use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates in **Schedule 1**, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.

### **4. Customer's obligations**

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required under **Schedule 1**, or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- (c) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start.

4.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

### **5. Change control**

5.1 Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;

- (b) the Supplier's existing charges;
  - (c) the timetable of the Services; and
  - (d) any of the terms of this agreement.
- 5.2 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.
- 5.3 If the Customer wishes to make a change to the Services:
  - (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
  - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 5.3(a), provide a draft Change Order to the Customer.
- 5.4 If the parties:
  - (a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or
  - (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with by professional mediation.
- 5.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 5.3 on a time and materials basis at the Supplier's daily rates of £xxx a day for a 7-hour day.

## **6. Charges and payment**

- 6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.
- 6.2 The Supplier shall invoice the Customer for the Charges at the intervals specified, or on the achievement of the Milestones indicated, in Schedule 1. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 6.3 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
  - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.4(a) will

accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;

- (b) the Supplier may suspend all or part of the Services until payment has been made in full.

6.5 All sums payable to the Supplier under this agreement:

- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. Licence and Intellectual property rights**

7.1 In relation to the Deliverables:

- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign, sell or otherwise transfer the rights granted in clause 7.1(b).

7.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

7.3 The Supplier:

- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 11 (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged

infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

- (c) shall not be in breach of the warranty at clause 7.3(a), and the Customer shall have no claim under the indemnity at clause 7.3(b), to the extent the infringement arises from:
  - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
  - (ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and
  - (iii) compliance with the Customer's specifications or instructions.

7.4 The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

7.5 If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause 7, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 7.3(b) or clause 7.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Supplier of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers

and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## **8. Data protection**

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 (Data protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller, and the Supplier is the processor.
- 8.3 Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

## **9. Confidentiality**

- 9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **10. Indemnity**

- 10.1 The Customer will indemnify and keep indemnified the Supplier against any and all loss, damage or liability suffered, and legal fees and costs incurred as a result from arising out of, or in connection with, the Customer's use of the Deliverables.

10.2 The Supplier will indemnify and hold the Customer harmless from and against losses that the Customer may suffer arising out of, or as a result of, the Supplier's mis-use or mismanagement of Customer Materials.

## **11. Limitation of liability**

11.1 Except as expressly provided for in this Agreement, the Customer assumes sole responsibility for the use of the Deliverables by the Customer. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Deliverables, or any actions taken by the Supplier at the Customer's direction.

11.2 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

11.3 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:

- (a) are subject to Clause 10.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

11.4 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

11.5 The liability of each party to the other party under this Agreement shall not exceed the greater of:

- (a) £5,000,000; and
- (b) the total amount paid and payable by the Customer to the Supplier under this Agreement in the 12-month period preceding the commencement of the event or events.

## **12. Termination**

12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified to make such payment; or
- (b) there is a change of Control of the Customer.

## **13. Obligations on termination and survival**

### **13.1 Obligations on termination or expiry**

On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services.

### **13.2 Survival**

- (a) On termination or expiry of this agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 7 (Intellectual property rights), clause 9 (Confidentiality), clause 11 (Limitation of liability), clause 13 (Consequences of termination), clause 17 (Conflict), clause 19 (Governing law) and clause 20 (Jurisdiction).

- (b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

**14. Assignment and other dealings**

- 14.1 This agreement is personal to the Customer, and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 14.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

**15. Variation**

Subject to clause 5 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**16. Entire agreement**

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**17. Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

**18. Third party rights**

- 18.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**19. Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

20. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## **Schedule 1**

Specifics of services go here.