

MASTER SERVICES AGREEMENT

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PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM KAGESSENSHI.ORG. BY USING KAGESSENSHI.ORG SOFTWARE OR SERVICES, CLIENT SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE KAGESSENSHI.ORG SOFTWARE OR SERVICES.

This Agreement (the "Agreement") is between KAGESSENSHI.ORG (the "Company") and the Client.

1. **Structure.** The Agreement consist of three components (a) these General Terms; (b) the Product Terms of Services; and (c) if applicable, all Statement of Work. If you order Company's Product from a Business Partner, any agreement that you enter into with the Business Partner is solely between you and the Business Partner and will not be binding on Company except to the extent that your agreement with a Business Partner references this Agreement.
2. **Acceptance Of SOW.** SOW shall be considered signed and accepted by Client upon the applicable SOW document signed by Client, or, upon Client's written request to commence the work stated in the applicable SOW document.
3. **Contract Price.** For performance of the Services and rendering the Deliverable, Client shall pay to Company all fees due under the applicable SOW.
4. **Project Overall Target Cost.** For the performance of Services in a Project, Company and Client shall agree on an Overall Target Cost of Services for the Project. Company and Client, shall collaboratively plan and conduct SOW creation and revisions in a manner which not to exceed the Overall Target Cost. Client may increase Overall Target Cost through providing in writing to Company of the amount to be added on top of the Overall Target Cost.
5. **Ownership of Deliverables.** "Intellectual Property Rights" means any and all (a) rights associated with works of authorship, including but not limited to copyrights, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents and (c) all other intellectual property rights in any jurisdiction throughout the world. To the fullest extent permitted by law, Company retains ownership in all Intellectual Property Rights of the Deliverable. Further, Company retains all ownership and Intellectual Property Rights to the raw video footage, music, images, source code and other components comprising the Deliverable for its future use. Upon full payment of the deliverable, Company grants Client a perpetual, worldwide, non-exclusive, royalty-free, irrevocable license to reproduce, prepare derivative works of, sell copies of, publicly display, publicly perform, sublicense, and distribute the Deliverable. Client shall retain sole ownership of all Intellectual Property Rights in connection with any original material it provides to Company for use within the Deliverable. If termination occurs, Company shall retain ownership in all Intellectual Property Rights and to the raw video footage, music, images, source code and other components comprising the work in process up to the date of termination. After a termination and upon full payment for the work in process, Company grants Client a perpetual, worldwide, non-exclusive, royalty-free, irrevocable license to reproduce, prepare derivative works of, sell copies of, publicly display, publicly perform, sublicense, and distribute the work in process. In no event shall Company be liable for any claims related to or arising from Client's improper use of the Deliverable, work in process, or the music, images, source code, and other components that comprise the Deliverable or work in process.
6. **Ownership of Background Technology.** Client acknowledges that Company owns or holds a license to use and sublicense various preexisting development tools, routines, subroutines and other programs, data and materials that Company may include in the Deliverables developed under this Agreement ("Background Technology"). Company retains all Intellectual Property Rights in the Background Technology. Upon full payment of the Deliverables, Company shall grant Client the rights to use the Background Technology, subject to separate licensing agreement which shall be provided in the applicable SOW.
7. **Third Party Software.** Company may use third party, Open Source Software or Proprietary Software to render the Services and Deliverables ("Third Party Software"). Intellectual Property Rights of Third Party Software are subject to the license granted by the respective owners of the Third Party Software. Company shall provide a list of Third Party Software to be used and their respective licenses within the respective SOW. Client agree to comply to the requirements of the license of the respective Third Party Software. Should the Client refuses to comply to the license of the respective Third Party Software,
 - a) Client shall provide in writing the list of Third Party Software that are not to be used.
 - b) Company may provide an option to use an alternative software, and Company may revise the estimated contract price of the SOW with respect to the requested changes.
8. **End Of Life Components.** Client agree to ensure that all software and hardware to be covered by Services have not reached or exceed the End Of Life date provided by their respective Vendors ("EOL"). Unless mutually agreed upon, Services shall not cover software or hardware that have reached or exceed their EOL.

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9. **Force Majeure.** In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics and pandemics; riots; power failures; national or regional emergency; movement control order; equipment or transmission failure or damage reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.
10. **Termination.** Client may terminate this Agreement upon mutual agreement in writing of Client and Company, upon one or more of the following events:
 - a) completion or cancellation of Project by Client
 - b) failure on the part of Company to comply with any provisions of the Agreement and remains unresolved for a period of 60 days upon receipt of written notice from Client of said failure,
 - c) a force majeure event occurred.Company may terminate this Agreement or specific SOW upon mutual agreement in writing of Client and Company, upon one or more of the following events:
 - a) completion or cancellation of Project by Client
 - b) failure on the part of Client to provide the dependencies required for the delivery of Services.
 - c) a force majeure event occurred.
11. **Staffing.** Staffing shall consist of full-time and part-time employees of Company and also may, at Company's election, include the use of partner resources and/or subcontractors in the provision of the Services. In the event of unavailability of personnel from specific category, Company shall assign alternative personnel with equivalent capabilities.
12. **Working Hours.** Unless otherwise agreed by the parties in writing, Services shall be performed Monday through Friday, between the hours of 9:00 a.m. – 5:00 p.m. Malaysian time. Consultants shall work eight (8) hours per day and forty (40) hours per week unless otherwise mutually agreed by the parties in writing. Work outside of the hours above, work on weekends or on Public holidays must be pre-approved in writing by Company.
13. **Non Solicitation.** Unless otherwise consented in writing, both parties agrees not to solicit, offer employment to, nor use the services of any employee of the other party who is involved in Project during the term of this Agreement and for a period of six (6) months thereafter.
14. **Premise of Work.** Services shall be performed at the Client site ("On-premise") or a remote location ("Remote" or "Remotely") which has physical or virtual access to the applicable Client hardware. If applicable, any documentation may be completed remotely at Company discretion.
15. **Payment.** In exchange for Company's Services under this Agreement, the Client shall pay Company the contract price of the SOW. Company shall submit a final invoice to Client for all services rendered by the Services Completion Date and Client shall promptly pay. Client is restricted from using any form of the Deliverable until final payment is received. Client shall pay travel and other expenses incurred by Company in performing the Services. In the event of a good faith dispute with regard to an item appearing on an invoice, Company shall have the right to withhold the Deliverable while the parties attempt to resolve the disputes.
16. **Payment For Metered Cloud Services.** Company may, with Client approval, utilize Third Party Metered Services such as Infrastructure As A Service (IaaS), Platform As A Service (PaaS), Software As A Service (SaaS), Cloud Application Programming Interfaces (APIs) and other Cloud Services and Tools, to render Company's Services under this Agreement. Company shall provide an estimated cost for the Cloud Services, and shall warn Client when particular planned activity are expected to cause consumption to exceed the estimated cost. In the case of consumption of the Cloud Services exceed the estimated cost, Client agree to pay the billed metered amount in full. Client may choose to subscribe to the Cloud Services directly with the respective Cloud Services Provider, or may appoint Company to subscribe to the Cloud Services on behalf of Client. In the case which Client appointed Company to subscribe to the Cloud Services on behalf of Client, Client agree to pay all applicable taxes and administrative fees in addition to the metered amount.
17. **Taxes.** Unless specified, all prices quoted does not include sales tax, withholding tax, or other applicable taxes. Client shall be liable for any taxes levied upon the sale, delivery, storage, consumption or transportation of the goods or services, and if any such items are paid or required to be paid by Company, the amount shall be added to and become part of the price payable to the Company.

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18. **Sizing Recommendations.** Hardware and software sizing depends on the workload they have to manage. Sizing recommendations are given based on best estimates from available information and prior experience related to workload, and might not be accurate especially if recommendations are calculated prior to final workload implementation and accurate statistics able to be collected using final workload. Company shall not be liable for insufficient sizing caused due to final hardware or software requirements for workload is more than what originally estimated, neither liable for excessive sizing due to final hardware or software requirements for workload is less than what originally estimated.
19. **Representation and Warranties.**

Company's Representation: Company represents that any materials used in the Deliverable shall not knowingly

 - a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy or
 - b) violate any law, statute, ordinance or regulation.

Client's Representation: Client represents that any materials provided to Company by Client for incorporation into the Deliverable shall not

 - a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy or
 - b) violate any law, statute, ordinance or regulation.

Warranty Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY SOW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
20. **Indemnification.** Client shall defend, indemnify and hold Company harmless from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys' fees and court costs) arising from or relating to any claims regarding elements or materials provided by Client and incorporated into the Deliverable. Additionally, Client shall defend, indemnify and hold Company harmless from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys' fees and court costs) arising from or relating to any claims regarding Client's unauthorized use of any music, images, source code or other materials comprising the Deliverable.
21. **Limitation of Liability.** COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID TO COMPANY HEREUNDER.
22. **Compliance with Laws.** Each party shall perform all of its obligations under this Agreement in compliance at all times with all foreign, federal, state and local statutes, orders and regulations, including those relating to privacy and data protection.
23. **Disputes.** Disputes and disagreements arising from this Agreement or because of it shall be resolved through negotiations between the Parties. In case of a failure to achieve consent through negotiations:
 - a) If the Client is a business entity incorporated in Malaysia, the Parties agree that all disputes and disagreements independently of their reasons, which arose or can arise between the Parties in accordance with this Agreement, including those related to its entering into, implementing, changing, terminating or annulling (in whole or partially), are submitted for consideration to an applicable court of general jurisdiction or to a magistrates' court in accordance to the current legislation of Malaysia;
 - b) If the Client is an organization or another business entity without establishment of legal entity (partnership, joint venture etc) and is not a resident of Malaysia, or if the Client is an individual and/or is not a resident or a citizen of Malaysia, the Client agrees that any dispute, disagreement or claim, which arises from or concerns this Agreement should be resolved in accordance to the rules of arbitration in the Asian International Arbitration Centre (Kuala Lumpur, Malaysia) (hereinafter AIAC) in accordance with AIAC regulations. The language in which arbitration proceeds is Malay or English. The decision of this court must be definitive and obligatory for the participating parties and is the only and exclusive method of resolving any disputes between the parties concerned. The Company also reserves the right to apply for resolving a dispute to a court of competent jurisdiction in the location of the Client, taking into account the legislation requirements in the location of the Client, if the Company shall wisely consider that this further allows to properly fulfill the resolving of the dispute within the applicable jurisdiction at the location of the Client.
24. **Choice of Law.** This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of Malaysia without regard to conflicts of laws provisions thereof.

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25. **General.** Neither party may assign this Agreement without the prior written consent of the other party and any attempt to do so shall be void. Any notice or consent under this Agreement shall be in writing to the address specified below. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. Any waivers or amendments shall be effective only if made in writing signed by a representative of the respective parties. 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 and communications relating to the subject matter of this Agreement. Both parties agree that the Agreement is signed by a duly, authorized company representative authorized to bind the company to its terms and services and no consent from any third party is required.