

## PROFESSIONAL SERVICES TERMS OF SERVICE

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This Terms of Service (including any Exhibits) governs your use of the Professional Services and is subject to the Master Services Agreement General Terms available at <https://kagesenshi.org/agreements> or, as applicable, other base agreement between you (Client) and KAGESENSHI.ORG (Company). Capitalized terms without definitions in this Terms of Service have the meaning defined in the base agreement. In the event of a conflict between this Terms of Service and the base agreement, the terms of this Terms of Service control.

KAGESENSHI.ORG may modify this Terms of Service by posting a revised version at <https://kagesenshi.org/agreements>, or by providing notice using other reasonable means.

Unless set forth otherwise in the applicable Statement of Work ("SOW"), the following terms shall apply to Professional Services ("Services"):

1. **Company as the Client's Professional Services Subcontractor.** If the Client is a prime contractor and Company is acting as the Client's subcontractor (a "Subcontracting Engagement"), then these Terms of Service, the applicable SOW, and the Agreement shall apply between the Client and the Company with respect to the Company's provision of the Professional Services. The Company shall provide the Professional Services for the Subcontracting Engagement to the Client for the Client's end customer project. Any agreement entered into between the Client and its end customer is solely between the Client and such end customer.
2. **Service Engagement Process.** Client agree that the following process shall apply for the engagement of Professional Services.
  - a) Unless mutually agreed upon, requests for services engagement should be made in writing to Company in not less than five (5) working days prior to commencement of Services.
    - i) Services engagement with Service Level Agreement ("SLA") shorter than five (5) working days shall be pre-paid as Consulting Unit bucket and consumed by drawing down the bucket.
    - ii) A minimum draw-down of 0.1 Consulting Unit will be charged daily as standby fee for services with SLA that requires outside of working hours response time, and 0.2 Consulting Unit shall be charged daily for services with SLA that requires 24/7 response time.
  - b) Company should create a SOW, and estimate the contract price required to render the service in the form of Quotation and submit them for acceptance by Client. Client should assist Company by promptly providing all information requests required for the creation of the SOW. Unless otherwise agreed upon in writing,
    - i) a single SOW shall be limited to Deliverables that can be completed within a four (4) weeks cycle or less. Activities that would require more than four (4) weeks to deliver shall be split into multiple SOW to be delivered consecutively.
    - ii) SOW Service fees should be priced as fixed fee, or based on Consulting Unit estimation utilizing rates agreed upon between Client and Company in a Schedule Of Services ("Estimated SOW Price").
    - iii) if SOW Services is based on Consulting Unit estimation, at completion of a cycle, Company shall calculate the fees based on the actual Consulting Unit spent to deliver the SOW ("Effective SOW Price"). In the event of the Effective SOW Price is less than Estimated SOW Price, the effective billable fees for the SOW ("Final SOW Contract Price") shall be:  
  
$$EC = \text{Effective SOW Cost}$$
$$OC = \text{Estimated SOW Cost}$$
$$\text{Final SOW Contract Price} = EC + (20\% \times (OC - EC))$$
  
  
In the event of the Effective SOW Price is higher than the Estimated SOW Price, the Final SOW Contract Price shall be the same as the Estimated SOW Price.
    - iv) before the commencement of subsequent cycle, Company and Client have an option to review the subsequent related SOW and Company have an option to re-estimate the SOW contract price. Client upon mutual agreement in writing of Client and Company, may choose to proceed with the revised SOW and Quotation or terminate the engagement.
  - c) Unless mutually agreed upon in writing, following rules shall apply:
    - i) Professional Services shall not cover the service to design, develop, nor conduct training activities.
    - ii) Professional Services shall not cover the service to design, develop, nor conduct transfer of knowledge activities.
    - iii) Training and transfer of knowledge activities are subject to a different terms of service.
  - d) Work shall only commence after the acceptance of the SOW and Quotation by Client.

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- e) Upon completion and delivery of the Deliverables, Client shall be given three (3) business days ("Acceptance Period") to verify the Deliverables for completeness or defects and notify the Company in written for resolution. If there are no written notification after the Acceptance Period, the Deliverables shall be automatically considered as accepted and related payments would be due.
3. **Consulting Unit.** Each Consulting Unit shall be up to a maximum of eight (8) hours and utilization of a Consultant for any hours within a day shall constitute a single Consulting Unit. Unless mutually agreed upon or stated otherwise in the applicable SOW, Services shall be engaged in accordance to following rules:
- a) Client agrees to engage a Consultant for a minimum of five (5) consecutive business days.
  - b) Following activities shall be considered as utilization of Consultant:
    - i) Attendance to a meeting with Client, Client employee(s) or Client representative(s) for purpose(s) related to the delivery of the SOW.
    - ii) Responding to support tickets raised by Client.
    - iii) On-premise or remote activity or activities related to the delivery of the SOW.
    - iv) Travel to Client premise(s) or other premise(s) for purpose(s) related to the delivery of the SOW.
  - c) Utilization in excess of eight (8) hours in a single day on weekdays shall be constituted as two (2) Consulting Unit utilization.
  - d) Utilization less than four (4) hours outside of business hours on weekdays shall be constituted as one-and-half (1.5) Consulting Unit utilization.
  - e) Utilization during weekends and public holidays shall be constituted as two (2) Consulting Unit utilization.
  - f) Utilization in excess of eight (8) hours in a single day on weekends and public holidays shall be constituted as three (3) Consulting Unit utilization.
  - g) Time spent on traveling to Client premise shall be added into utilized hours.
  - h) Phone or on-line consulting shall be considered as an engagement and be calculated into utilized hours.
4. **Company Responsibilities.**
- a) Company should provide a single point of contact to Client for the duration of the project for coordination and scheduling of project tasks, documentation and any changes to scope requiring a Change Order.
  - b) Company should coordinate activities of all Company resources and provide consultants with the requisite skills necessary to properly execute the requirements of the SOW.
  - c) Company should communicate status and changes to status to Client before and during the engagement.
5. **Client Responsibilities.**
- a) Client shall be responsible for fully describing business requirements and their respective acceptance criteria to Company including completing any questionnaires from Company, along with current business processes and data processing overview.
  - b) Client should assign a Project Manager who will:
    - i) be available to Company personnel throughout the engagement;
    - ii) coordinate all interviews and meeting schedules with the Client team.
  - c) Client shall assign managers, full-time system administrators and other personnel, as appropriate, to work with Company throughout the project duration. Client shall make a knowledgeable representative available to Company during all phases of the engagement and shall engage and participate throughout the project duration. In particular, Client shall work collaboratively with Company to address any issues with Company's environment in a timely manner.
  - d) Client shall purchase or provide all hardware, software, licenses, staff, maintenance contracts, public internet protocol ("IP") addresses, encryption keys and system environments necessary for Company to provide the Services.
  - e) Client shall provide Company personnel with access to Client's building facilities, computer room facilities, systems, passwords, etc., as needed, during normal business hours as well as after hours, if necessary, and a suitable work area commensurate with the number of on-premise Company consultants.

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6. **Project Management.** Client agrees to engage a minimum of one (1) Consulting Unit of Project Manager day for every five (5) Consulting Unit of Consultant for the purpose of project management.
7. **Travel Expenses.** Client shall pay travel and other expenses incurred by Company in performing the Services. In the event of Client requested the engagement to be canceled or rescheduled within thirty (30) days prior to the start date of the SOW ("Scheduled Date"), Client shall reimburse Company for any non-refundable travel expenses that were booked prior to Company's receipt of Client's request to cancel or reschedule. In the event of Client requested the engagement to be canceled or rescheduled within fourteen (14) or fewer days prior to the Scheduled Date:
  - a) Client shall reimburse Company for any non-refundable travel expenses that were booked prior to Company's receipt of Client's request to cancel or reschedule; and
  - b) Company shall be entitled to invoice and Client agrees to pay a reschedule fee of MYR 10,000 which shall be in addition to the fees set forth in the SOW.
8. **Change Control Process.** If either party wishes to make changes to the SOW, including but not limited to modifying the scope of work or the fees, such changes shall only be effective upon mutual agreement and execution of a "Change Order" describing such changes. Company shall have no obligation to provide Services pursuant to a Change Order unless both parties have executed a Change Order.
9. **Documentation.** Company shall submit all final Project documentation(s) in Portable Document Format ("PDF"), or if applicable, in printed form. Company reserve the rights to use any software and tools to create documents and document elements. Document(s) in its source format should be provided upon request, however, Company is under no obligation to provide to Client the software, training, nor knowledge needed to open or compile the source format, neither responsible for any issues arise due to Client failure to use compatible software to open or to apply the steps required compile the source format.
10. **Documentation Change Request.** Project documentations will be created following standard best practice of Company. Revision to follow a different documentation practice may be subject to additional costs. . Any revision to follow a different documentation practice requested by the Client shall be considered a change request. The Client agrees that such changes may incur additional costs, and payment for these changes shall be made in accordance with the Company's standard billing rates or as otherwise mutually agreed in writing prior to implementation.
11. **Training and Knowledge Transfer.** Unless mutually agreed upon or stated otherwise in the applicable SOW, Company is under no obligation to provide training nor knowledge transfer related to the technologies, tools, methodology, skills nor knowledge that was utilized to deliver the Services.
12. **Escalation Process.** In the event of issue in the engagement, and the issue is not being resolved in a reasonable time frame, Company or Client may escalate the issue as follows:
  - a) Raise the issue initially to the Project Manager.
  - b) If not resolved at the Project Manager level, an issue report shall be generated and the issue shall be escalated to the Client-nominated sponsor.
  - c) If the issue cannot be resolved within a predetermined period or falls outside the authority of the sponsor, it shall be escalated to Company's Senior Management.
13. **Fixed Fee Services.** For Services to be performed on a fixed fee basis, Client is responsible to ensure that all requirements are spelled out in detail and signed-off in a Requirement Document. Company shall review the signed-off Requirement Document and advise Client on the Requirement Item that able to be delivered, and what unable to be delivered within the scope, timeline and budget of the SOW. Client and Company shall agree in writing on which Requirement Items that shall be delivered within the scope, timeline and budget of the SOW prior to commencement of work. Client agree to execute a Change Order for Requirement Items that could not be delivered within the scope, timeline and budget of the SOW.

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14. **Acceptance Process.** For Services performed on a time and materials basis, Company deliverables to Client shall only be the utilized Consulting Unit and shall be deemed accepted upon delivery. Utilized Consulting Unit shall be invoiced monthly based on actual Consulting Unit utilized. Company shall use commercially reasonable efforts to complete Services described in the SOW but does not guarantee such Services shall be completed within the allotted hours or days set forth in the SOW. If additional Consulting Unit are required, the parties must mutually approve and execute a Change Order.

For Services performed on a fixed fee basis to include documentation deliverables or other deliverables (the "Deliverables"), Company shall notify Client upon delivery of the Deliverables and Client shall have three (3) business days to review such Deliverables (the "Acceptance Period") to confirm that the Deliverables conform to any acceptance criteria as may be set forth in the SOW. Within the Acceptance Period, Client must provide to Company in writing its acceptance of the Deliverables or a notification of any issues or deficiencies. In the event of notification of any issues or deficiencies, Company may, in its sole discretion, either promptly revise the Deliverables and resubmit them for Client review, or if such revision and re-submission is not reasonably practicable, as Client's sole remedy and Company's exclusive obligation, Company shall undo, retract, or remove artifacts created as part of the non-confirming Deliverable, refund any pre-paid fees for the non-conforming Deliverable, the SOW shall terminate and no further fees shall be due under the SOW. If Client fails to provide Company written notice of either acceptance or notification of issues or deficiencies within the Acceptance Period, the Deliverable(s) shall be deemed accepted and any related payments shall become due.

15. **Intellectual Property Ownership and Licensing.** Pre-existing intellectual property owned by either party (or your client in a Subcontracting Engagement) remains the property of that party. Nothing in this Product Appendix transfers ownership of intellectual property. Company uses an open source development model and any software created by Consultants under this Terms of Service will be licensed under an open source software license. Any modifications to or derivatives of open source software will be licensed under the applicable open source license(s) for that software. To the extent that any part of the Professional Services is not software (e.g., reports, templates, or presentations) and is not subject to an open source license, Red Hat grants to Client (or Client's end customer in a Subcontracting Engagement) the necessary rights to use such content for internal business purposes. Nothing in this Terms of Service alters the confidentiality responsibilities of either party.

**Exhibit A: Service Engagement Process**

Following flow chart describe the detail of Professional Services Engagement Process.

