

GENERAL TERMS OF ENGAGEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM **KOSLAB PLT** ("PROVIDER"). BY USING THE PROVIDER'S SOFTWARE OR SERVICES, YOU ("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 SOFTWARE OR SERVICES.

This General Terms of Engagement (the "Agreement") is between the Provider and the Client.

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:
 - a) **"Background Technology"** means preexisting development tools, routines, subroutines and other programs, data, and materials that Provider owns or holds a license to use and may include in the Deliverables.
 - b) **"Business Partner"** means an authorized third-party entity, such as a reseller, distributor, or agent, permitted by the Provider to market, sell, or facilitate the provision of the Provider's products or services to the Client.
 - c) **"Deliverable"** means the final work product, including but not limited to software, code, video, images, or documentation, produced by Provider for Client as specified in an SOW.
 - d) **"EOL"** (End of Life) means the date provided by a Vendor after which a product or component is no longer supported or maintained.
 - e) **"End Client"** means any third party to whom the Client provides the Deliverables or for whose benefit the Services are performed, as specified in an SOW.
 - f) **"Foreground IP"** means Intellectual Property Rights created specifically by the Provider for the Client in the performance of Services under a specific SOW.
 - g) **"Intellectual Property Rights"** means all (a) rights associated with works of authorship, including copyrights, (b) trademark and trade name rights, (c) trade secret rights, (d) patents, and (e) all other intellectual property rights in any jurisdiction worldwide.
 - h) **"Open Source Software"** means software distributed under a license that permits users to access, modify, and redistribute the source code, typically adhering to the standards maintained by the Open Source Initiative (OSI).
 - i) **"SOW"** means a Statement of Work or Order Form executed by the parties to initiate the purchase of products or services.
2. **Structure.** The Agreement consist of three components. If the documents conflict, the following order of precedence applies:
 - a) Statements of Work or Order Forms ("SOW") entered in relation with this Agreement, if applicable.
 - b) the Product Terms of Services; and
 - c) these General Terms;

If you order Provider'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 Provider except to the extent that your agreement with a Business Partner references this Agreement.
3. **Work Initiation.** The Client shall execute an SOW to purchase any products or services from the Provider, or to initiate any work under this Agreement.
4. **Acceptance of SOW.** An SOW shall be considered executed and accepted by the Client upon
 - a) the signature of the document by an authorized representative of the Client, or
 - b) the Client providing a written request or authorization to commence the work or provide the products or services stated in the applicable SOW.
5. **Contract Price.** For performance of the Services and rendering the Deliverable, Client shall pay to Provider all fees due under the applicable SOW.

6. **General Ownership and Licensing of Deliverables.** Pre-existing intellectual property owned by either party remains the property of that party. Provider uses an open source development model and any software created by Provider's personnel under this Agreement 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 Deliverables is not software (e.g., reports, templates, or presentations) and is not subject to an open source license, upon full payment of the deliverable, Provider 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 Provider for use within the Deliverable.

In no event shall Provider 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.

7. **Ownership of Background Technology.** Client acknowledges that Provider owns or holds a license to use and sublicense various preexisting development tools, routines, subroutines and other programs, data and materials that Provider may include in the Deliverables developed under this Agreement ("Background Technology"). Provider retains all Intellectual Property Rights in the Background Technology. Upon full payment of the Deliverables, Provider shall grant Client the rights to use the Background Technology as embedded in the Deliverables.
8. **Third Party Software.** Provider 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. Provider 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 refuse to comply with the license of the respective Third Party Software, Client shall provide in writing the list of Third Party Software that are not to be used. Provider may provide an option to use an alternative software and may revise the estimated contract price of the SOW with respect to the requested changes. In the event that the SOW cannot be delivered without the excluded Third Party Software, or if the parties fail to agree upon suitable alternatives, the parties may mutually agree to terminate the applicable portion of the SOW, or the applicable SOW in its entirety, in good faith and without prejudice.

9. **Ownership of Specifically Commissioned Intellectual Property.** Notwithstanding the general ownership provisions in Section 6 (General Ownership and Licensing of Deliverables), where the Client specifically commissions the creation of Intellectual Property under an SOW, the Client shall own the resulting Foreground IP upon full payment.

The parties acknowledge that a Deliverable may consist of a combination of Background Technology and Foreground IP. This transfer of ownership applies exclusively to the novel work created specifically for the Client as defined in the SOW and does not extend to:

- a) Any Background Technology;
- b) Any Third Party Software;
- c) Preexisting components utilized to create the Foreground IP; or
- d) The Provider's general methods and know-how.

For any Foreground IP owned by Client, Client hereby grants Provider a perpetual, royalty-free, non-exclusive license to utilize such IP for internal training, technology improvement, and process optimization.

10. **Residual Rights.** Nothing in this Agreement shall restrict Provider from the use of any ideas, concepts, know-how, methodologies, or techniques relating to the Services or Deliverables that Provider, alone or with Client, may create or acquire during the performance of the Services, that are retained in the unaided memory of Provider's personnel and that are not specific to or identifiable as proprietary to the Client. Provider shall remain free to use its general knowledge, skills, and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services, for any purpose, including providing similar services to other clients, provided that Provider does not breach its confidentiality obligations. For the avoidance of doubt, Provider's residual rights shall not include and Provider shall not use or disclose:

- a) Client Confidential Information;
- b) Client trade secrets;
- c) Information or materials that uniquely identify the Client or the End Client;

11. **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.
12. **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.
13. **Termination.** Client may terminate this Agreement upon mutual agreement in writing of Client and Provider, upon one or more of the following events:
 - a) completion or cancellation of Project by Client or End Client
 - b) failure on the part of Provider 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.Provider may terminate this Agreement or specific SOW upon mutual agreement in writing of Client and Provider, upon one or more of the following events:
 - a) completion or cancellation of Project by Client or End Client
 - b) failure on the part of Client to provide the dependencies required for the delivery of Services.
 - c) a force majeure event occurred.
14. **Staffing.** Staffing shall consist of full-time and part-time employees of Provider and also may, at Provider'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, Provider shall assign alternative personnel with equivalent capabilities.
15. **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. – 6:00 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 Provider.
16. **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 twelve (12) months thereafter.
17. **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 Provider discretion.
18. **Payment.** In exchange for Provider's Services under this Agreement, the Client shall pay Provider the contract price of the SOW. Provider 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 Provider in performing the Services outside of **Klang Valley**. In the event of a good faith dispute with regard to an item appearing on an invoice, Provider shall have the right to withhold the Deliverable while the parties attempt to resolve the disputes.
19. **Payment Upon Termination.** In the event of termination for any reason other than an uncured material breach by Provider, unless otherwise agreed upon in writing, Client shall pay Provider for:
 - a) all Services performed and Deliverables (including work-in-process) rendered up to the effective date of termination;
 - b) all non-cancelable expenses incurred by Provider; and
 - c) a termination fee equal to fifteen percent (15%) of the remaining balance of the SOW contract price as a "kill fee" to compensate for resource reallocation and administrative costs.

Provider shall have no obligation to transfer any licenses or Deliverables until all such payments are received in full.

20. **Payment For Metered Cloud Services.** Provider 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 Provider's Services under this Agreement. Provider may provide an estimated cost for the Cloud Services; however, Client acknowledges that all estimates are non-binding. 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, subject to Provider's written acceptance, appoint Provider to subscribe to the Cloud Services on behalf of Client. In the case which Client appointed Provider 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.
21. **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 Provider, the amount shall be added to and become part of the price payable to the Provider.
22. **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. Provider 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.
23. **Confidentiality.** Each party agrees to maintain the confidentiality of the other party's proprietary information, including trade secrets, business plans, and technical data ("Confidential Information"). Confidential Information shall not be disclosed to any third party without prior written consent, except as required by law or to employees and subcontractors who need to know such information for the performance of this Agreement and who are bound by similar confidentiality obligations.
24. **Data Protection (PDPA).** To the extent that Provider processes personal data on behalf of the Client, both parties shall comply with the Personal Data Protection Act 2010 (PDPA) of Malaysia and any other applicable data protection laws. Client represents that it has obtained all necessary consents for Provider to process such data. Provider shall implement appropriate technical and organizational measures to protect personal data against unauthorized or unlawful processing.
25. **Representation and Warranties.**
- Provider's Representation:** Provider represents that any materials used in the Deliverable shall not knowingly
- infringe on the intellectual property rights of any third party or any rights of publicity or privacy or
 - violate any law, statute, ordinance or regulation.
- Client's Representation:** Client represents that any materials provided to Provider by Client for incorporation into the Deliverable shall not
- infringe on the intellectual property rights of any third party or any rights of publicity or privacy or
 - 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. PROVIDER DOES NOT GUARANTEE ANY SPECIFIC UPTIME OR SERVICE LEVEL AGREEMENT (SLA) UNLESS EXPLICITLY STATED IN AN SOW; NO SERVICE CREDITS SHALL BE OWED FOR SERVICE INTERRUPTIONS UNLESS EXPRESSLY AGREED IN WRITING.
26. **Indemnification.** Client shall defend, indemnify, and hold Provider harmless from and against any and all claims, losses, liabilities, damages, expenses, and costs (including reasonable attorneys' fees, court costs, and regulatory fines) arising out of or relating to:
- any materials or elements provided by Client for incorporation into the Deliverable;
 - Client's unauthorized use of any music, images, source code, or other components of the Deliverable;
 - any breach by Client of its obligations regarding data protection, privacy, or cybersecurity;
 - any cybersecurity incident or data breach caused by or originating from Client's environment, systems, or hardware; and
 - any claims brought by an End Client or any other third party related to the Client's use or distribution of the Deliverables.

27. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER 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 PROVIDER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID TO COMPANY FOR THE PERFORMANCE OF APPLICABLE SOW IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
28. **Limitation of Liability Exclusions.** NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW.
29. **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.
30. **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.
 - c) The prevailing party in any such arbitration or subsequent legal proceeding to enforce the award shall be entitled to recover its reasonable attorneys' fees and arbitration costs from the non-prevailing party.
 - d) Notwithstanding the above, Provider reserves the right to initiate legal proceedings in the jurisdiction of the Client's location for the purposes of (a) collecting undisputed unpaid fees, or (b) seeking injunctive or other equitable relief to protect Provider's Intellectual Property Rights or Confidential Information.
31. **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.
32. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the laws of Malaysia, such provision shall be deemed severed from this Agreement, and the remaining provisions shall continue in full force and effect.
33. **General.** 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.

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