
(the “Customer”)

-and-

Outdesk
(the “Company”)

Outsource Staffing Agreement Terms & Conditions

Outsource Philippines Pty Ltd T/A Outdesk (ABN 63 620 507 897)

30 - 34 Gordon Street
Manly Vale NSW 2093

+61 (0)2 8667 0728

admin@outdesk.com.au

Outdesk Service Agreement

RECITALS

- A. The Customer has requested The Company to provide Services to the Customer.
- B. The Company has agreed to provide the Services to The Customer upon and subject to the following terms and conditions.

NOW THE PARTIES AGREE as follows:

Interpretation

1.

'Confidential Information' includes, but is not limited to, matters not generally known outside the Customer, such as developments relating to existing and future products and services marketed or used or to be marketed or used, or rejected, by the Customer and persons or Customers dealing with the Customer and also information relating to the general business operations with the Customer including profit and loss statements; balance sheets; customer lists; cost and selling price information; trade secrets, know-how and specifications in respect of the company's products; business and marketing plans; third party information disclosed to the company in confidence.

'Outdesk', 'Service Provider', 'Company', means Outsource Philippines Pty Ltd T/A Outdesk and its subsidiaries.

'The Customer', 'Customer', means the client of Outdesk as outlined in the Outdesk - Outsource Staffing Agreement.

'Outdesk Fee' means the fees set out in the Outdesk - Outsource Staffing Agreement under section '3' - Monthly Pricing Schedule.

'Outdesk Service Master Agreement' means the terms and conditions contained in this agreement and the Outdesk - Outsource Staffing Agreement as may be applicable.

'Outdesk Staff', 'Staff', means the person or persons employed by Outdesk or its subsidiaries and selected by the Customer to perform the work required by the Customer.

'Services' means the services set out in the Outdesk - Outsource Staffing Agreement.

'Service Type' means the work and duties required to be performed by the Outdesk Staff as determined by the Customer.

Commencement and provision of services

2.

- (a) Subject to any rights of early termination contained in clause 7, this Agreement commences from the Commencement Date and continues until either party terminates this Agreement by giving to the other party 30 days prior notice in writing.
- (b) Outdesk will provide the Services set out in the Outdesk - Outsource Staffing Agreement.
- (c) Where the Outdesk Staff has commenced performance of services prior to execution of this Agreement, and which are being performed in contemplation of the execution of this Agreement, the terms and conditions of this Agreement will apply to those services.

Outdesk Fee

3. The Customer shall pay Outdesk for the Services in the manner and in the amounts set out in the Outdesk - Outsource Staffing Agreement in the manner set out in **Schedule 1**.

Outdesk Staff & Responsibilities

4. Customer Responsibility
 - (a) The Customer accepts full responsibility in determining the Service Type for each Outdesk Staff and the selection of any Outdesk Staff.
 - (b) The Customer acknowledges and agrees that it is solely responsible for the hiring decision and the ongoing management of the Staff Members assigned to it by Outdesk.
 - (c) The Customer shall be responsible for providing direction, supervision, and control over the Staff Members and for ensuring that they perform their duties and responsibilities in accordance with the Customer's requirements.
 - (d) The Customer acknowledges and agrees that any agreement with Outdesk does not create or establish an employment relationship and the Customer assumes all liability for the correct classification of an Outdesk Staff as an independent contractor based on any applicable law.
5. Outdesk Responsibility
 - (a) Outdesk shall be responsible for the recruitment and placement of Staff Members to provide services to the Customer under this Agreement.
 - (b) Outdesk shall use its best efforts to recruit and place Staff Members who meet the qualifications and requirements specified by the Customer.
 - (c) The Customer acknowledges and agrees that it is solely responsible for the final hiring decision and for ensuring that the Staff Members assigned to it by Outdesk are suitable for the Customer's needs.
6. Ongoing HR Support and Legal Compliance
 - (a) Outdesk shall provide ongoing HR support to the Customer and the Staff Members assigned to the Customer under this Agreement.
 - (b) Such support shall include, but not be limited to, assistance with onboarding, training, performance management, and employee relations.
 - (c) Outdesk shall also ensure that it complies with all applicable laws and regulations relating to the employment of the Staff Members in the Philippines, including but not limited to laws and regulations governing wages, hours of work, overtime, benefits, and working conditions.
 - (d) Outdesk shall indemnify and hold harmless the Customer from any claims, damages, or expenses arising from Outdesk's failure to comply with such laws and regulations.

Termination of Agreement

7. Notwithstanding anything else contained in this Agreement, the Agreement may be suspended or terminated if:
 - (a) the other party commits a breach of a term of the Agreement or is in default of any warranty of this Agreement; and
 - (b) the defaulting party fails to correct such breach or default within seven (7) days of receiving notice specifying such breach or default.
 - (c) Upon termination of this Agreement for any reason, each party shall promptly return to the other party all confidential information and property belonging to the other party.
 - (d) Each party shall also comply with any post-termination obligations or restrictions set forth in this Agreement including but not limited to:
 - i. cleaning of any client data from Outdesk or its staff's systems in accordance with the

Outdesk Client Data Protection Policy, viewable online at outdesk.com.au/client-data-protection-policy

- ii. removal of any access to client software or systems
 - iii. restricting or blocking access to the specific staff's outdesk email address
- (e) Any disputes arising during or after termination of this Agreement shall be resolved in accordance with the dispute resolution process set forth in this Agreement through clause 22.

Employee Termination

- 8. Outdesk reserves the right to terminate the employment of any Staff Member assigned to the Customer if the Staff Member is found to have breached any terms of their employment contract or any policies or procedures of Outdesk or the Customer. Such breaches may include, but are not limited to, misconduct, poor performance, violation of confidentiality or non-compete agreements, or failure to comply with applicable laws and regulations. In such cases, Outdesk will provide the Customer with written notice of the termination and the reasons for it.
- 9. Outdesk warrants that it and Your Outdesk Solutions Corp will comply with all applicable laws relating to the employment of the Staff Member;
- 10. Reasons for and conditions surrounding termination include,
 - (a) low performance
 - (b) violation of company policy or rules
 - (c) harassment
 - (d) insubordination
 - (e) absence without leave
 - (f) failure to perform
 - (g) gross negligence
 - (h) misconduct

Warranties and indemnities

- 11. Standard representations, warranties and indemnity
 - (a) Each party represents and warrants to each other party as at the date of this Agreement and at all times after the date of this Agreement, that:
 - i. it has full power and authority to enter into, perform and observe its obligations under this Agreement;
 - ii. it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms.
 - (b) The Customer warrants that no literary or other works employed or created by the Customer in the provision of the services by the Outdesk Staff infringes any copyright, obligation of confidentiality, patent or other right of property belonging to or benefiting any third party.

Inventions and copyright works

12. Outdesk and it's Staffs assigns to the Customer:

- a) all inventions, discoveries and novel designs whether or not registrable as designs or patents including any invention of or development or improvements to equipment, technology, methods or techniques made by Outdesk and it's Staffs ('the Inventions'); and
- b) the entire copyright throughout the world in all writing, art works and other copyright works ('the Works') created by Outdesk and it's Staffs during and pursuant to this Agreement.
- c) Intellectual Property Ownership:
- d) The Customer shall retain all right, title, and interest in and to any intellectual property created or developed by Outdesk or its Staff Members in the course of providing services to the Customer under this Agreement.
- e) Outdesk and its Staff Members shall not have any rights to such intellectual property and shall not use or disclose such intellectual property except as necessary to perform their obligations under this Agreement. Upon termination of this Agreement or at the request of the Customer, Outdesk shall promptly return to the Customer all materials containing or embodying such intellectual property

Confidentiality & Privacy

13.

- (a) Outdesk and its Staffs agree that during the course of this Agreement it may become acquainted with or have access to Confidential Information. Outdesk and it's Staffs during and after the term must maintain the confidential information and prevent its unauthorised disclosure to or use by any other person, firm or company, unless prior written authorisation is obtained.
- (b) Outdesk and it's Staffs agree that it must not:
 - i. use the Confidential Information for any purpose other than for the benefit of the Customer during or after the Term;
 - ii. delete the Confidential Information of the Customer without the written consent of the Customer;
 - iii. for whatever reason, either for itself or any third party, appropriate, copy, memorise or in any manner reproduce any of the Confidential Information.
 - iv. Outdesk Client Data Protection Policy, viewable online at outdesk.com.au/client-data-protection-policy
- (c) Outdesk and it's Staffs agrees to return any or all of the Confidential Information however embodied on the request of the Customer.
- (d) Outdesk and it's Staffs agrees that it must not, both during or after the Term for whatever reason, make improper use of the Confidential Information acquired by virtue of this Agreement, to gain directly or indirectly, an advantage for itself or for any other person or to cause detriment to the Customer.
- (e) Nothing in this Agreement imposes an obligation on Outdesk and it's Staffs with respect to maintaining confidence regarding information which is generally known or available by publication, commercial use or otherwise than as a result of a breach by Outdesk and it's Staffs of its obligation in this section.
- (f) Outdesk, Your Outdesk Solutions Corp, and the Staff Member must only use and disclose personal or sensitive information in accordance with your privacy policy and the Privacy Act.
- (g) Outdesk, Your Outdesk Solutions Corp, and the Staff Member must destroy or de-identify personal or sensitive information when it is no longer needed for a permitted purpose.
- (h) Outdesk, Your Outdesk Solutions Corp, and the Staff Member must ensure that any personal or sensitive information is only accessible by people who require such access;
- (i) Outdesk warrants that it and Your Outdesk Solutions Corp have appropriate IT security systems in place to ensure compliance with this provision and protection of personal and sensitive information

Relationship of parties

14. The Customer's relationship with Outdesk is that of a service provider. Neither the Customer nor Outdesk has (nor may it represent that it has) any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name. Nothing stated in this Agreement must be construed as constituting the Customer and Outdesk as partners, or as creating the relationship of employer and employee, master and servant or principal and agent between the parties.
15. The Customer acknowledges and agrees that by entering into this Agreement with Outdesk, this Agreement does not create, establish or otherwise constitute an employment relationship or employment agreement with Outdesk.
16. This Agreement does not create a partnership or agency relationship between the Customer and the Outdesk Staff.

Pay, remuneration, and bonus to Outdesk Staff

17. All Outdesk Staff are remunerated in accordance with all required governing bodies. All staff are paid a salary package that includes required employee and employer contributions, including but not limited to, Republic of the Philippines Social Security System payments, Home Development Mutual Fund, commonly known as the Pag-IBIG Fund payments, Tax Reform for Acceleration and Inclusion (TRAIN) law payments required by the Philippines Bureau of Internal Revenue, Philippine Health Insurance Corporation payments, and Payment of Employees' Compensation (EC) Death Benefits Pension for the Public Sector.
18. The customer may decide to include an incentive payment, salary bonus or voluntary remuneration increase to Outdesk Staff. Outdesk agrees to pass the agreed amount in full to the Staff's gross salary package less any increases to the government mandated employer contribution payments.
19. Any salary increase will be subject to all local, state and federal taxes and applicable mandated contributions.

Restrictions on direct hiring of Outdesk Staff

20. 1
 - (a) The Customer (or a related body corporate of the Customer) agrees that it shall not make any offer for work or services to be performed by an Outdesk Staff who is presently performing work for the Customer (or who has performed work for the Customer in the previous twelve months). A Customer that breaches this clause shall pay to Outdesk as compensation the sum of \$10,000.00 AUD for each Outdesk Staff that it accepts or retains to provide work or services in breach of this clause. The Customer acknowledges that this sum is a genuine pre-estimate of the minimum loss expected to be lost as a consequence of such a breach.
 - (b) The Customer shall not seek or request any information relating to payments and rates charges between Outdesk and the Outdesk Staff and acknowledge that this information is commercially sensitive and confidential.

Force Majeure

21. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make previously owed payments to the other Party) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)") that frustrates the purpose of this Agreement:
 - i. acts of God;
 - ii. flood, fire, earthquake or explosion
 - iii. war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest;
 - iv. government order or law;

- v. actions, embargoes or blockades in effect on or after the date of this Agreement;
- vi. action by any governmental authority;
- vii. national or regional emergency;
- viii. strikes, labor stoppages or slowdowns or other industrial disturbances;
- ix. epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness);
- x. emergency state;
- xi. shortage of adequate medical supplies and equipment;
- xii. shortage of power or transportation facilities; and
- xiii. other similar events beyond the reasonable control of the Impacted Party.

Dispute Resolution

22. In the event of any dispute arising out of or in connection with this Agreement, the parties shall first attempt to resolve the dispute through good faith negotiations. If the dispute cannot be resolved through negotiations, either party may refer the dispute to mediation in accordance with the mediation rules of the Australian Disputes Centre. The mediation shall take place in Sydney, New South Wales and be conducted in English. If the dispute is not resolved through mediation within 30 days of the referral to mediation, either party may commence legal proceedings. This clause is governed by the laws of New South Wales and the parties submit to the jurisdiction of the courts of that State and the Commonwealth of Australia.

General

23.

- (a) *Notices.* All notices and consents required or permitted to be given under this Agreement must be in writing and given by personal service, pre-paid postage, a facsimile transmission, or email at the addresses of the parties set out in this Agreement or to such other address as either party may designate to the other by written notice.
- (b) *Assignment.* Neither this Agreement nor any rights or obligations of the Agreement may be assigned or otherwise transferred by the Customer without the prior written permission of Outdesk. Outdesk may assign its rights pursuant to this Agreement provided written notice is given to the Customer.
- (c) *Governing law and submission to jurisdiction.*
 - i. This Agreement is governed by the laws of New South Wales and the parties submit to the jurisdiction of the courts of that State and the Commonwealth of Australia.
 - ii. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia, and the courts of appeal from them, for determining any dispute concerning this Agreement or the transactions contemplated by it.
 - iii. Each party waives any right it has to object to an action being brought in those courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.
- (d) *Amendments.* This Agreement may be amended only in writing signed by duly authorised persons for both parties.
- (e) *Severability.* If any provision of the Agreement should be held to be invalid in any way or unenforceable, the remaining provisions must not in any way be affected or impaired. This Agreement must be construed so as to most nearly give effect to the intent of the parties as it was originally executed.
- (f) *Prohibition and enforceability.*
 - i. Any provision of, or the application of any provision of, this Agreement and any transaction contemplated by it which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
 - ii. Any provision of, or the application of any provision of, this Agreement and any transaction contemplated by it which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the

remaining provisions in that or any other jurisdiction

(g) Waivers

- i. A provision of, or a right created under, this Agreement may not be waived except in writing executed by the party granting the waiver.
- ii. A failure by a party to insist upon a strict performance of any of the terms and conditions of this Agreement is not deemed to be a waiver of any subsequent breach or default of the terms and conditions of this Agreement.

(h) Rights cumulative

Except as expressly provided to the contrary in this Agreement, the rights, powers, discretions, authorities and remedies provided in this Agreement are cumulative with, and do not exclude, the rights, powers, discretions, authorities or remedies of a party provided by law independently of this Agreement.

(i) Costs and expenses

- i. Damages incurred, and liability suffered, by a party covered by indemnification by another party under this Agreement includes all related costs and other expenses (including reasonable legal fees and expenses).
- ii. Each party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement.

(j) To extent not excluded by law

The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by law.

Taxes in general

24. The Customer is responsible for payment of any taxation and other like liabilities (including excise, personal, property and other taxes, stamp duty, custom or levies) which may arise under any Commonwealth, State or Territory legislation or regulation or any international law as a result of or in connection with this Agreement. The Customer indemnifies and shall keep Outdesk indemnified in relation to any claims, liabilities and costs which Outdesk may incur or be liable to pay as a result of such taxation and other like liabilities which may arise under any Commonwealth, State or Territory legislation or regulation or any international law.

GST

- 25.
- (a) In this clause 19, GST has the same meaning as under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any subsequent and associated legislation.
 - (b) Unless otherwise stated, all prices, costs or charges comprising the Outdesk Fee are exclusive of GST.
 - (c) If GST is payable by The Customer (or by the representative member for a GST group of which the Customer is a member) on any supply made under or in relation to this Agreement, the Customer must pay to the Company an amount (GST Amount) equal to the GST payable on the service. The GST Amount is payable by the Company in addition to and at the same time as the net consideration for the service.
 - (d) The Company's right to payment under clause 19(c) is subject to the Company delivering a valid tax invoice to the Customer.
 - (e) Each party must be registered for GST and will notify the other party if it ceases to be registered.

Interpretation

26. In this Agreement, except to the extent that the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) the singular includes the plural and vice versa;
 - (c) words importing a gender include any gender;
 - (d) a reference to a document includes any variation or replacement of the document;
 - (e) a reference to a party includes a reference to that party's successors and permitted assigns;
 - (f) a reference to a part, clause, party, annexure, Schedule or schedule is a reference to a part and clause of, and a party, annexure or schedule to, this Agreement and a reference to this Agreement includes any annexure and schedule;
 - (g) an expression importing a natural person includes any company or other body corporate, partnership, joint venture or association, and any Governmental Agency;
 - (h) a reference to a position, body, or authority of or within Outdesk includes a reference to any position, body or authority which replaces or supersedes it or takes over its duties;
 - (i) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating or replacing it, whether passed by the same or another Governmental Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (j) an agreement, representation or warranty on the part of two or more persons binds, or is for the benefit of, them jointly and severally;
 - (k) headings and boldings are inserted for convenience and do not affect interpretation;
 - (l) where a word or phrase is specifically defined other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
 - (m) a reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;
 - (n) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision; and
 - (o) the meaning of general words is not limited by specific examples introduced by "including", or "for example" or similar expressions.

Inconsistency between documents comprising this Agreement

27. Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:
- (a) this document;
 - (b) Outdesk - Outsource Staffing Agreement; and
 - (c) a document expressly incorporated by reference in:
 - (d) this document;
 - (e) the order of precedence between them will be the order listed above, this document having the highest level of precedence.

Schedule 1

Outdesk Fee:

- 1 The Outdesk Fee shall be paid monthly and in advance.
- 2 The Outsource Staffing Agreement is a rolling, month-to-month agreement between the Customer and the Company and can be terminated at any time by either party. Both parties must provide 30 day notification of termination if required.
- 3 The Customer's payment for the Services must be:
 - (a) prepaid monthly in advance; and
 - (b) by either, credit card online payment, direct debit of nominated bank account, electronic funds transfer

The Outdesk fee shall be adjusted on a pro-rata basis in the event that the fee does not cover a complete month due to the agreement ending. The Outdesk fee in the circumstance shall be adjusted by multiplying the working days in the month in question and dividing it by the days worked in that month.

- 4 If the Customer pays in Australian Dollars using a credit card, a merchant fee of:
 - (a) 1.6% will be imposed by Outdesk for VISA Card payments; or
 - (b) 3.0% will be imposed by Outdesk for AMEX Card payments.Merchant fees may be varied by Outdesk from time to time should the need arise.
- 5 If the Client pays in an international currency using a credit card, a merchant fee of 2.5% will be imposed by Outdesk and which merchant fees may be varied from time to time by Outdesk should the need arise.
- 6 Outdesk Fee will be calculated in accordance with the Rates Schedule applicable at the time of the execution of the agreement and as subsequently varied from time to time by Outdesk which it may do so in its absolute discretion to take into account matters such as inflation or exchange rate fluctuations. Increases will be brought to the attention of the Customer promptly. The varied rate shall apply within a set term (ie. 30 days) and from the date written on the notice given to the Customer by Outdesk.
- 7 The Rates are exclusive of GST (if any).