

Welcome to Thinking Machine's **Master Software as a Service Subscription Agreement** (the "**Agreement**"). This is a contract between you, our customer, and us, **Thinking Machine Systems Limited**, a company incorporated and registered in England and Wales with company number 12031891 whose registered office is at 85 Great Portland street, First Floor, London, W1W7LT (below mentioned as "**Supplier**") and we want you to know yours and our rights before you use the platform. Please take a few moments to read this Agreement before signing the Order Form (defined below). Once you sign the Order Form, unless otherwise agreed between us in writing, it means you agree to these terms and will abide by them throughout the duration of our relationship.

## BACKGROUND

- (A) The Supplier has developed a software as a service solution made available to subscribers via a web-portal on a subscription basis for the purpose of extracting value from technology services and contracts in telecom.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.

## AGREED TERMS

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Authorised Users:** those employees, agents and independent contractors of the Customer, its subsidiaries and affiliates, who are authorised by the Customer to use the Services.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8.5 or clause 8.6.

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

**Customer Data:** the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data.

**Documentation:** this Agreement and any additional document provided by Supplier to the Customer from time to time in connection with this Agreement setting out a description or any instructions of the Services.

**Effective Date:** the date you receive and sign through the Order Form.

**Initial Subscription Term:** the initial term of this Agreement as set out in the Order Form.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of confidential information (including know-how and trade secrets) 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.

**Normal Business Hours:** 8.00 am to 6.00 pm GMT time, each Business Day.

**Order Form:** means the order form relating to the Services executed or legally accepted by the Customer as binding and incorporated into this Agreement for all legal purposes.

**Renewal Period:** the period described in clause 11.1.

**Services:** a service solution made available to subscribers via a web-portal on a subscription basis for the purpose of extracting value from technology services and contracts in Telecom. The Services will be provided by the Supplier to the Customer under this Agreement via [www.thinkingmachine.co](http://www.thinkingmachine.co) or any other website notified to the Customer by the Supplier from time to time.

**Software:** the online software applications provided by the Supplier as part of the Services.

**Subscription Fees:** the subscription fees payable by the Customer to the Supplier, as set out in the Order Form.

**Subscription Term:** has the meaning given in clause 11.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Supplier's Privacy Policy:** Supplier's Privacy Policy available at [www.thinkingmachine.co/privacy-policy](http://www.thinkingmachine.co/privacy-policy).

**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 UK General Data Protection Regulation and the Data Protection Act 2018.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 6.1 which entitle Authorised Users to access and use the Services in accordance with this Agreement.

**Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. Services

- 2.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 2.2 The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 2.3 The Supplier shall make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 2.4 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the customer support services during Normal Business Hours.
- 2.5 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time; and
  - (b) each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed as and when prompted by the Services and that each Authorised User shall keep his password confidential.
- 2.6 The Customer shall not knowingly:
- (a) distribute or transmit to the Supplier, via the Services, any Viruses;
  - (b) store, access, publish, disseminate, distribute or transmit via the Services any material which:
    - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
    - (ii) facilitates illegal activity;
    - (iii) depicts sexually explicit images;
    - (iv) promotes unlawful violence;
    - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
    - (vi) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, on no less than thirty (30) days' prior written notice to the Customer, such notice specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable the Customer's access to the Services for the duration of time that the breach remains unremedied.

2.7 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (b) access all or any part of the Services in order to build a product or service which competes with the Services;
- (c) use the Services to provide services to third parties;
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.

2.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, if there is any such unauthorised access or use, promptly notify the Supplier.

**3. Customer data**

3.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

3.2 Both parties will comply with all applicable requirements of the Data Protection Legislation and shall abide to the terms of Supplier's Privacy Policy. This clause 3 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

3.3 The parties acknowledge that:

- (a) if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller, and the Supplier is the processor for the purposes of the Data Protection Legislation; and
- (b) Supplier's Privacy Policy sets out the scope, nature and purpose of processing by the Supplier and the types of personal data and categories of data subject applicable.

3.4 Without prejudice to the generality of clause 3.3, 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 so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.

3.5 Customer agrees that Supplier may include Customer's name and logo in customer lists or related marketing and promotional material for the purpose of identifying users of Supplier's Services.

#### **4. Supplier's obligations**

4.1 The Supplier undertakes that the Services will be performed in accordance with this Agreement, the Documentation and with reasonable skill and care.

4.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, correct any such non-conformance promptly.

4.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4.4 The Supplier warrants and undertakes that that:

- (a) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
- (b) it will comply with all applicable laws and regulations with respect to its obligations under this Agreement;
- (c) it will co-operate with the Customer in all matters relating to the Services and comply with the Customer's instructions; and
- (d) it will not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

#### **5. Customer's obligations**

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, documentation requested by Customer, security access information and configuration services;

- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- (c) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time.

## 6. Charges and payment

6.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 6 and the Order Form.

6.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details, approved purchase order information acceptable to the Supplier, or any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
  - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clause 11.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
  - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clause 11.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;

and the Customer shall pay each invoice within 30 days after the date of such invoice or as agreed in the Order Form.

6.3 If the Supplier has not received payment within 30 days after the due date interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

6.4 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

## 7. Proprietary rights

- 7.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services. Except as expressly stated in this Agreement, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 7.2 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## 8. Confidentiality

- 8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 8.2 Subject to clause 8.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 8.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 8.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 8.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 8.6 The above provisions of this clause 8 shall survive termination of this Agreement, however arising.

## 9. Indemnity

- 9.1 The Supplier shall indemnify the Customer from any and all claims arising out of any infringement of a third-party intellectual property rights used by the Supplier in the course of delivering the Services.
- 9.2 If the Supplier is required to indemnify the Customer under this Clause 9, the Customer shall:
- (a) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 9.1) (**IPRs Claim**);
  - (b) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim; and
  - (c) provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier.
- 9.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services without a reduction or alteration in functionality so that they become non-infringing.
- 9.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier or its agents, subcontractors or partners or with the Supplier's consent or approval; or
  - (b) the Customer's use of the Services or Documentation otherwise than in accordance with the Documentation; or
  - (c) the Customer's use of the Services or Documentation after notice of the actual infringement from the Supplier or any appropriate authority.

## 10. Limitation of liability

- 10.1 Nothing in this Agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 10.2 Subject to clause 10.1 and clause 10.2:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
  - (b) the losses for which the Supplier assumes responsibility, and which shall (subject to clause 10.2(c)) be recoverable by the Customer include:



- (i) sums paid by the Customer to the Supplier pursuant to this Agreement; and
  - (ii) losses incurred by the Customer arising out of or in connection with any claim or proceeding by any third party against the Customer caused by the act or omission of the Supplier;
- (c) the Supplier's total aggregate liability in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to 100 % of the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose.

## 11. Term and termination

11.1 This agreement shall, unless otherwise terminated as provided in this clause 11, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **"Renewal Period"**), unless:

- (a) the Customer notifies the Supplier that it wishes to terminate the agreement, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **"Subscription Term"**.

11.2 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 fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a non-pecuniary material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.3(c) to clause 11.3(g) (inclusive);

**11.3** On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall terminate and the Customer shall cease all use of the Services as from the date of termination of this Agreement; and
- (b) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**12. Force majeure**

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**13. Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Order Form, the provisions in the main body of this Agreement shall prevail.

**14. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**15. Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**16. Severance**

16.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

16.2 If any provision or part-provision of this Agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**17. Entire agreement**

17.1 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.

17.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

**18. Assignment**

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

**19. No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**20. Third party rights**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**21. Amendments**

No waiver, amendment, or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorised representative of the party against whom such waiver, amendment or modification is sought to be enforced Notices

**22. Notices**

All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by e-mail, upon acknowledgement of receipt, or (b) on the first Business Day following the date of dispatch delivered by a recognized next-day courier service. All notices hereunder shall be delivered as above, or as otherwise agreed in writing by the parties.

**23. Governing law**

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

**24. Jurisdiction**

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