

# ThinkGrid Services Agreement

ThinkGrid Services Agreement "TSA" Version 3.11

## How this Agreement Works

You will be asked to sign a Service Order Form ("SOF") that lists the services you have chosen and the related fees. The SOF will incorporate this ThinkGrid Services Agreement ("TSA") and a Service Level Agreement ("SLA"). It may also incorporate an addendum to this TSA if you are purchasing specific optional services. When we use the term "Agreement" in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the time that the SOF is signed. This Agreement is signed between ThinkGrid Limited of One Hardwick's Square, London SW18 4AW, its parents and subsidiaries, collectively known as "The Company" and "The Customer", listed at the end of the agreement.

## Definitions

Some words and expressions are defined in the SOF and they apply equally here. Some other words and expressions used have the following particular meanings:

<b>"Company"</b>	ThinkGrid Limited and its parents or subsidiaries
<b>"Confidential Information"</b>	of a party (the "Disclosing Party") means all information of the Disclosing Party, which has value by virtue of not being publicly known and which is disclosed or otherwise made available to the other (the "Receiving Party") under this Agreement;
<b>"AUP"</b>	Detailed in Section 9;
<b>"Fee(s)"</b>	means the monthly, quarterly or annual recurring fee(s) set out in the SOF;
<b>"Force Majeure"</b>	means any event beyond the reasonable control of the affected party;
<b>"Initial Term"</b>	means the minimum term for which we will provide the Services as set out in the SOF;
<b>"One Time Installation Fee"</b>	means our initial installation charge as set out on the SOF or as otherwise agreed in writing between us;
<b>"Professional Services"</b>	means any non-standard professional consulting or support services provided by us;
<b>"Service Commencement Date"</b>	means the date upon which the SOF is agreed and signed;
<b>"Services"</b>	means the services to be provided by us as set out in the SOF and includes (i) management of the Services by a service delivery team that includes a team leader, account manager, and support specialists with training and experience in hosting systems, (ii) availability of live support twenty four hours per day, seven days per week, year round; and (iii) use of the ThinkGrid Customer portal;
<b>"Service Levels"</b>	means our service level commitments set out in the SLA;
<b>"Supplemental Fee(s)"</b>	means all fee(s) payable by you in respect of any Professional Services including without limitation fees for migrating servers, reconnection and reinstatement of service fees, managed backup overage fees, additional bandwidth fees, and any emergency service fees all of which shall be in accordance with our then current prices and pricing policy if not agreed in writing in advance with you in the SOF.

## 1. What we will do for you

- 1.1 We will perform the Services and any Professional Services throughout both the Initial Term and any additional agreed period afterwards in accordance with the Service Levels. In return you agree to pay the Fees and any Supplemental Fees on time and agree to use the Services in accordance with the terms of this Agreement.
- 1.2 If agreed in the SOF we will provide the firewall protection but are not liable to you if there is any unauthorised access to your web solution, content or data through use of our Services unless the access was caused by our failure to perform our obligations under this Agreement and that failure caused such unauthorised access.
- 1.3 We will ensure that the Services do not contain any virus on the Service Commencement Date and thereafter, we will provide virus checking as set out in the SOF. If tape rotation forms part of the Services, then on a weekly or monthly rotation as set out in the SOF, we will store our supplied backup media offsite in a temperature and humidity controlled environment and protected by a fire suppression system (except whilst in transit).
- 1.4 We are constantly upgrading our data centre facilities and in order for you to benefit from this, you agree that we may relocate your services within our data centres, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. In each case we will give you reasonable advance notice and use all reasonable endeavours to minimise the effect that such change will have on your use of the Services.

- 1.5 The Company will use reasonable skill and care to ensure that the network provided is protected from being interfered with by unauthorised third parties and that anti-virus software is used to protect the network from viruses. However, the Company uses third party hardware and software for the network configuration and anti-virus software cannot guarantee that the Customer's network will be free from hackers or viruses.

## 2. Payment

- 2.1 On the Service Commencement Date we will send you an invoice for the One Time Installation Fee and the Fees. After that, we will send you an invoice for all Fees every calendar month unless otherwise stipulated.
- 2.2 We will send you an invoice for any Supplemental Fees either as soon as we have provided the Professional Services.
- 2.3 All services are paid in advance of the consumption of the services.
- 2.4 All payments will be made in the currency in the SOF at the exchange rate at the date of the invoice.
- 2.5 At any time, where you are or have been in material or persistent default of our payment terms, we reserve the right to amend our payment terms or billing practices by giving you not less than 14 days prior written notice.
- 2.6 Payment of all our invoices shall be due when delivered. If you don't pay within 14 days after the invoice date we will:
- 2.6.1 Charge interest at 5% per year above the Bank of England's base lending rate from the invoice date until actual payment; and
- 2.6.2 On at least 4 days notice, suspend any or all of the Services until payment of the invoice, any interest, our administrative and legal costs of collecting payment, and any further sums payable are received by us; and
- 2.6.3 If a Cheque, Standing Orders or Direct Debit payment are refused by your bank, a charge of £25.00 will be added to your account.
- 2.7 In the event that the Services are suspended or terminated for any reason other than our fault or in the event that you decide to migrate your servers, a reconnection or migration fee may be payable at our normal hourly rates.
- 2.8 All Fees and Supplemental Fees are exclusive of applicable Value Added Tax or other relevant taxes.

## 3. What you will do

- 3.1 You need to provide and maintain your own equipment, software and communications lines, including any public lines required by you properly to access your Services, content or data provided by the Company.
- 3.2 All Internet use is subject to security vulnerabilities and you acknowledge that a security breach could be disastrous for you as well as for us. We require you to use at least reasonable security precautions in light of your business and the Services you are using. We provide security for the Services as set out in the SOF but you are responsible for security other than that.
- 3.3 The Services are provided subject to your proper use of them and therefore, you undertake that your use of the Services will not be in breach of the AUP nor any other applicable laws, codes or regulations including data protection laws.
- 3.4 You agree that we may suspend Services without telling you and without liability (but where practicable, we will give you reasonable prior notice) if:
- 3.4.1 the Services are being used in violation of the AUP;
- 3.4.2 you do not cooperate with our investigation of any suspected violation of the AUP;
- 3.4.3 there is an attack on your servers or other event for which we reasonably believe that the suspension of Services is necessary to protect you, our network or our other customers; or
- 3.4.4 if required by law or regulation or as compelled by a law enforcement or government agency.
- 3.5 You agree to reimburse us for our costs and expenses arising from any breach of the AUP or a breach of a third party are rights by you or your customers' or user's content, data or equipment.

## 4. Ownership Rights and Confidentiality

- 4.1 Each of us agrees that this Agreement does not transfer any rights of ownership in the other's technology nor intellectual property. Each of us agrees not to try to access each other's and each other's third party supplier's source code or other trade secrets.
- 4.2 The Receiving Party agrees that (i) it will use the Disclosing Party's Confidential Information solely for the purpose of the Agreement, and (ii) it will not disclose Confidential Information to any third party except as required under the terms of this Agreement.

## 5. Warranty and Liability

- 5.1 We warrant that we will use all reasonable skill and care in performing this Agreement and will comply with all relevant laws, statutes and regulations (including the Data Protection Act 1998). ThinkGrid Limited is registered with the DPA # Z7879408
- 5.2 The remedies given in the Service Levels are your only remedy for our failure to meet our warranted performances.
- 5.3 Subject to clause 5.4:

- 5.3.1 our total aggregate liability for any loss or damage arising out of or in connection with the Services, the Professional Services, or this Agreement will not exceed 50% of the actual Fees received by us during the previous 6 months of this Agreement; and
- 5.3.2 we will not be liable in any way for any increased costs nor expenses, loss of profit, business contracts, revenues nor expected savings nor any special, indirect nor consequential damage whatsoever arising out of this Agreement nor any provision of it nor use of the Services or Professional Services nor of our negligence, nor any error nor defect in either nor of the performance non-performance nor delayed performance by us under this Agreement.
- 5.4 Nothing in this Agreement excludes or limits our liability for fraudulent misrepresentation or for death or personal injury caused by our negligence.
- 5.5 Except for the warranties given in this Agreement, all implied or other warranties are excluded to the extent we are legally able to do so.
- 5.6 We will not be deemed to break this Agreement nor be liable for any delay, failure of performance nor interruption of the Services to you nor loss caused by Force Majeure. If a Force Majeure event adversely affects your use of the Services and continues for more than 4 weeks, you may terminate this Agreement by written notice to us.

## 6. Other people's products

- 6.1 At your request and subject to you entering into their standard contracts, we may provide third party software and/or services and may also provide product support for them if detailed specifically in the SOF.
- 6.2 If this Agreement indicates that we will use Microsoft Software to provide the Services, you agree to the Customer Licence Terms as defined in SOF for Microsoft Software and agree that if you resell the Services you will require each of your customers to also agree to those terms.
- 6.3 You agree that the use of third party products is in accordance with their standard contracts and is at your sole risk and we are not responsible in any way for their performance, features nor failures.
- 6.3.1 The Customer's rights to use the Software are subject to the usage rights granted by the third party software supplier, such as Microsoft, Sage or Adobe etc. The Customer acknowledges that the usage rights of third party software may vary from product to product and agrees to abide by such rights. The Customer is deemed to accept the usage rights in relation to the Software set out in the Order by placing an Order with the Company.
- 6.4 The Company uses third party anti-virus software to protect the servers and email from viruses. Although all reasonable care is taken by the Company to ensure that the anti-virus software is up to date, the Company makes no warranty as to the effectiveness of its third party anti-virus software and excludes any loss or damage caused by a virus which infects any electronic device, computer, PC, server or network owned or used by the Customer.
- 6.5 The customer agrees that any software provided by The Company will remain the property of The Company and cannot be taken, transferred or re-assigned.

## 7. Ending the agreement

- 7.1 We will provide the Services and any Professional Services from the Service Commencement Date throughout the Initial Term and continue afterwards until one of us ends the Agreement below or as otherwise permitted in the Agreement.
- 7.2 Either of us may end this Agreement:
  - 7.2.1 on 30 days written notice to the other after expiry of the Initial Term; or
  - 7.2.2 straight away if the other breaches this Agreement and if the breach is capable of being remedied, has not remedied it within 7 days of receipt of the written notice requiring it to be remedied; or
  - 7.2.3 straight away if the other is unable to pay its debts or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts.
- 7.3 The Company may end this Agreement:
  - 7.3.1 there is a breach of the AUP; or
  - 7.3.2 on 30 days written notice at any time
- 7.4 On termination by either of us the following will apply:
  - 7.4.1 any rights or obligations which have accrued prior to termination will not be affected;
  - 7.4.2 any service credits due to you under the SLA, will be paid by us within 30 days, if it is more than the Fees due to us;
  - 7.4.3 all Confidential Information belonging to the other will be returned or destroyed within 14 days;
  - 7.4.4 you will give up any internet protocol numbers addresses or address blocks allocated to you and if you do not we can change or remove them.
- 7.5 On termination by either of us other than under 7.2.2 or 7.2.3, we will continue to provide Services to you at your request for up to 6 months until you have migrated your solution to another supplier and do what is reasonable to assist you in your migration provided that you pay the Fees due for such Services monthly in advance. The provisions of this Agreement including the Service Levels will remain in effect until completion of the migration. We will not be liable for any third party costs incurred by you in connection with the migration.
- 7.6 If this Agreement is terminated during the Initial Term under clause 7.2.2 or 7.2.3 for your breach then you will still be liable to pay all Fees for the remaining months of the Initial Term.

## 8. Domain Names

- 8.1 The Company will use its best endeavours to ensure that, once an Order to register a domain name has been received, an application to register the domain name is made within a reasonable time period. However, the Customer accepts that between the time of Order for a domain name and the time the Company (whether by itself or through a third party instructed by the Company) applies to register the requested domain name, another third party may have registered the domain name which are registered by naming authorities on a first come first served basis. If this happens the Company will not be liable for any resulting loss or damage to the Customer.
- 8.2 For UK domain names the Customer acknowledges and agrees that when it places an Order for a UK domain name with the Company that the Company is acting as an agent of the Customer (who will be the Applicant for the domain name) and that the Customer will enter into a direct contractual relationship with Nominet subject to Nominet's Terms and Conditions for Domain Name Registration which can be read by clicking on the following link: <http://www.nominet.org.uk/ReferenceDocuments/TerTSAndConditions/TerTSAndConditions.html>
- 8.2.1 The Customer is solely responsible for its use of a domain name and must abide by the naming authority's terms and conditions. Any dispute between the Customer and any other person regarding the rights relating to the domain name is a matter between the Customer and such third party.

## 9. Acceptable Usage Policy "AUP"

- 9.1 The Customer agrees to abide by the following Acceptable Usage Policy ("AUP"). The Customer warrants and undertakes to us that it will not by itself or others:
- 9.1.1 use its services (where the Company is providing the Service) for unlawful purposes;
- 9.1.2 knowingly or recklessly post, link to or transmit, or permit third party users to post, link to or transmit:
- 9.1.2.1 any material that is abusive, threatening, harmful, malicious, defamatory, obscene, pornographic, profane or otherwise unlawful;
- 9.1.2.2 any material containing a virus or other hostile computer program;
- 9.1.2.3 it will not post, link to or transmit any material that constitutes or encourages a criminal offence, gives rise to civil liability or infringes the intellectual property rights of any third parties.
- 9.1.3 use services for any unlawful activity in the United Kingdom or any other country where the Service is used or accessed
- 9.1.4 knowingly or recklessly transmit, or permit third party users to transmit unsolicited email in breach of UK law including the Privacy and Electronic Communications (EC Directive) Regulations 2003
- 9.2 The Company may suspend the Customer's Service(s) immediately and without notice to the Customer in its sole discretion if in the Company's opinion the Customer has or has knowingly, recklessly or negligently permitted any breach of the Acceptable Usage Policy, or if it receives any complaint that unsolicited email has been transmitted by the Customer, or by the Customer's agents or customers, or if any material hosted on the Customer's web site(s) or server(s) (in respect of which the Company is providing a hosting service) may be unlawful, harmful or defamatory.
- 9.3 The Company may disclose the Customer's name and address to a complaining third party if in our reasonable discretion it is necessary or appropriate to do so, for example if there is evidence of a prima facie case that the Customer's web site(s) or server(s) in respect of which the Company is providing a hosting service is infringing the rights of a third party.

## 10. Law and disputes

- 10.1 This Agreement shall be governed by English law.
- 10.2 Each of us agrees to attempt in good faith to clear up any dispute first by discussing it. If that does not work then, except for debt recovery, we each agree to attempt in good faith to resolve the dispute through mediation by the Centre for Effective Dispute Resolution in accordance with their rules. Their decision will be final and binding on the parties. If it hasn't been resolved by the CEDR procedure within 2 months of the start of the procedure or if one of us drops out of the CEDR procedure then each agrees to the non exclusive jurisdiction of the Courts of England.

## 11. Confidentiality

- 11.1 In order to provide the Service(s) the Company will be hosting email and other data on behalf of the Customer. In order to provide the Service(s), respond to support requests and test systems it may be necessary for employees of the Company to have access to such email and data. Each employee who has such access is has a confidentiality clause in their Contract of Employment with the Company that prohibits them from disclosing to third parties any confidential information save as required by the general law (Court Order or government authority such as police). The Company warrants that all email and data of the Customer will be treated as confidential and will not be disclosed or supplied to any third party unless the Company is ordered to do so by a Court Order or to comply with a government agency.

## 12. Privacy Policy

- 12.1 As a respected global organisation, ThinkGrid is committed to respecting and protecting the privacy of both our customers and of visitors to our websites.
- 12.2 Put simply and without legal jargon: "We will do nothing with your personal data that you would not anticipate from a privacy-conscious organisation whose communications are founded on permission-based marketing" (where we ask permission or informed consent to communicate with our website visitors and customers before communicating with them). Our provisions:
  - 12.2.1 For visitors, we've structured our websites so that, in general, you can visit us on the web without identifying yourself or revealing any personal information.
  - 12.2.2 For customers, once you choose to provide us with personally identifiable information (any information by which you can be identified), you can be assured that it will only be used to support your customer relationship with ThinkGrid.
  - 12.2.3 Your data will not be disclosed to any other party without your consent, unless they act in the capacity of a data processor under our contractual obligations, or where we are obliged to by law.
  - 12.2.4 We will use the information you provide, or that is gathered from web-based technology, to provide you with information on our products and services and those of our partners. We are, after all, a business, but we only seek your permission to communicate with you, based on your assessment of us as a trusted supplier.
  - 12.2.5 If, however, we exceed the bounds of reasonable expectations and invade your space with too much of too little value, you can exercise your right to leave us at any time or unsubscribe from our communications. Even though we will lose you as a valued prospect or customer, we will respect that request.
  - 12.2.6 You may unsubscribe from our services and communications at any time by visiting either your personal profile page on our website (reached by the link at the bottom of every email we send), or, if you are a customer, by your personal details page within your Control Panel (also reached by the link at the bottom of every email). You can also contact us directly at [abuse@thinkgrid.co.uk](mailto:abuse@thinkgrid.co.uk)
  - 12.2.7 Hopefully, this may be all you need to know to feel comfortable in proceeding around our website or in providing us with any personal information.
- 12.3 If however, you feel the need to read the same sentiments, but as the lawyers would like to see it, please read our full privacy policy details outlined on this page.

## 13. General legal provisions

- 13.1 If any part of this Agreement is unenforceable the remainder will continue to apply.
- 13.2 We won't be considered to be partners nor shall we be responsible for any act or failure to act of the other or have the right or authority to bind the other in any way.
- 13.3 A third party won't have any rights under this Agreement.
- 13.4 Neither of us may transfer or assign all or substantially all of its rights or duties under this Agreement without the prior written consent of the other except that each of us may transfer all or part of its rights or duties to any group company or affiliates who in the other's reasonable opinion have sufficient assets to meet the obligations of such assignment under this Agreement.
- 13.5 All formal notices required to be sent shall be by letter. A letter shall be delivered at the address given in the SOF, by recorded delivery post. If the notice is not returned as undelivered it will be deemed to have been given 3 working days after the day on which it was sent. All other notices shall be made by the opening of a ticket on the myThinkGrid.com portal which shall be deemed to have been given upon the date opened.
- 13.6 If one of us does not enforce a right available to it under this Agreement in any particular instance, then that will not prevent it from enforcing that right in future or in any other instance.
- 13.7 Each of us agrees that during this Agreement and for 1 year after that it will not directly or indirectly seek to hire any of the other's staff who provided or used the Services.
- 13.8 Each of us gives the other its consent to positively publicise that we have a business relationship, but not to disclose the terms of it.

### Signed for on behalf of "The Customer"

Signature .....

Title .....

Company .....

Date .....