**WHITE LABEL SERVICE AGREEMENT**

***(myyjän näkökulma)***

White Label Service Agreement -sopimuspohja on tehty ensisijaisesti myyjän näkökulmasta erityisesti tilanteeseen, jossa ICT-palveluyritys tarjoaa mobiilipalvelujen ohjelmistoalustansa (Platform) ostajayrityksen käyttöön ja ostaja saa mobiilisovelluksilleen ostajannäköisen mobiiliohjelmistopalvelun. Tässä sopimuspohjassa ostajayritys saa lisenssillä käyttöönsä oman brandinsa näköisen palvelun, mutta itse teknisen ratkaisun toteutus ja kaikki muu toiminnallisuus on ICT-palveluyrityksen kontrollissa. Ostaja maksaa palvelusta erillisen hinnaston mukaiset maksut.

Sopimuspohjan kaikki kohdat tulee tarkistaa ja muuttaa vastaamaan käytännön tilannetta; on myös huomioitava, että yhden sopimuskoh­dan muuttaminen yleensä vaikuttaa myös sopimuksen muihin lausek­keisiin ja lisämuutokset ovat tällöin tarpeen.

**HUOM.! Tämä sopimuspohja ei sovellu käytettäväksi käytännön tilan­teisiin ilman sopimusjuridisen asiantunti­jan ennakkotarkistusta ja kor­jauksia.**

 ***DRAFT 0.1 – APRIL \_\_, 20\_\_***

**WHITE LABEL SERVICE AGREEMENT**

This White Label Service Agreement (the “**Agreement**”) between **ICT-yhtiö Oy** with principal offices at Pääkatu 1, 00100 Helsinki, Finland (“ICT-yhtiö”) and **Asiakasfirma Oy** offices at Sivukatu 1, 00100 Helsinki, Finland (“Asiakasfirma”) contains the terms which govern the use of the ICT-yhtiö’s platform.

**WHEREAS** ICT-yhtiö has developed a proprietary online platform that allows white label partners

to design, build, sell and manage mobile apps through a content management system (the

“**Platform**”); and

**WHEREAS** Customer wishes to license the Platform on the terms and conditions herein.

**NOW, THEREFORE**, acknowledging the receipt of adequate consideration and intending to be

legally bound, the parties agree as follows:

**ARTICLE 1 -** **GRANT OF LICENSE**

**1.1** ICT-yhtiö grants to Customer a limited, non-exclusive, nontransferable, non-sublicensable license to use the Platform during the Term solely to design, build, sell and manage mobile apps for Customer and third-party clients of Customer (the “**License**”) to be hosted at ICT-yhtiö’s current white labeled content management interface. Without limiting the generality of the foregoing, in no event shall Customer have the right to sub-license or provide access to the Platform or any mobile app building services contained therein to any third parties (including clients of Customer) unless the Platform is resold to clients of Customer in accordance with the terms and conditions of Article 5 below.

**1.2** All mobile apps created pursuant to this Agreement shall be branded under the name of Customer *(White Label Branding****)***  or its clients and shall be accessible to the public under a URL designated by Customer or its clients. The name, trademark, trade name, trade dress, designs and logos of ICT-yhtiö (the “**Marks**”) shall not appear on the mobile application or Customer URL, unless mutually agreed by the parties in advance in a separate signed written authorization. No license, express or implied, is granted to Customer for any of the Marks under this Agreement.

**1.3** All rights not granted to Customer under this Agreement are expressly reserved by ICT-yhtiö. Without limiting the generality of the foregoing, ICT-yhtiö owns and retains all right, title and interest in and to the Marks and Platform and the underlying source code, which is confidential and proprietary to ICT-yhtiö and protected under applicable intellectual property and trade secrets laws including. Customer shall not:

 (i) decompile, reverse engineer or modify the Platform or underlying source code, or otherwise attempt to obtain the source code for the Platform;

(ii) sublicense or allow any other person to use the Platform, except pursuant to the normal operation of the content management interface or in accordance with the provisions of Article 5 below;

(iii) use the Marks of ICT-yhtiö without ICT-yhtiö’s prior written consent;

(iv) use the Platform or underlying source code for any purpose other than the design, build, sale and management of mobile apps on the content management interface;

(v) use the Platform or underlying source code in a manner that interferes with the use of Platform by ICT-yhtiö or its other customers;

(vi) commence development of an electronic platform for the design, build, sale or management

of mobile apps in competition with the Platform; or

(vii) make any claim of ownership or license to the Marks or the Platform in any way, it being understood that this Agreement shall solely govern the Customer’s interest in the Marks and the Platform.

Customer acknowledges that it does not presently have the special skills, techniques or business policies developed by ICT-yhtiö, nor does the Customer have access to the ICT-yhtiö body of knowledge. A violation of this provision shall be deemed to be a material breach of this Agreement and, in such event, ICT-yhtiö shall have the right, in addition to retaining all monies paid hereunder and pursuing all other remedies available at law or in equity, to refuse or terminate Customer’s access to the Platform and services. The restrictions contained in this Article 1.3 shall expressly survive the termination or expiration of this Agreement.

**ARTICLE 2 -** **SERVICE DESCRIPTION**

**2.1** All mobile apps built and managed by Customer hereunder shall be hosted at ICT-yhtiö’s content management interface. Customer will provide identifying graphics and text to be integrated into the site. The site will present identity, links and contact information exclusive to Customer. The following modules shall be available to Customer:

(i) Application templates, ability to add more templates;

(ii) Application dashboard, ability to create applications based on templates;

(iii) Page editor, ability to add more page editors;

(iv) xxxxxxxxxx

 (v) yyyyyy;

 (vi) Payment module

ICT-yhtiö reserves the rights to change the appearance and functionality of these modules at ICT-yhtiö’s own discretion without advance prior notification to Customer.

**2.2** Customer shall create all mobile apps using the Platform at ICT-yhtiö’s content management interface. Application builds are automated, and Customer shall be responsible for all build verification. When a user submits a mobile app for build on Customer’s website, Customer’s review team is responsible for review and approval of the mobile app, and should review all mobile app content, interact with customer, and ensure the content is appropriate for publishing.

Representatives of ICT-yhtiö will not review mobile apps created by Customer, will not launch the mobile apps on an actual device, and will not verify if the mobile apps launch successfully. After Customer review and approval, the mobile apps are then scheduled for auto build on ICT-yhtiö’s content management interface. Once scheduled each application build may take up to 24 hours. Application binaries will be available for download via a link following completion by ICT-yhtiö.

**2.3** The mobile apps created by Customer hereunder will be hosted on ICT-yhtiö’s cloud servers. ICT-yhtiö will host and maintain Customer’s website as part of this service agreement. ICT-yhtiö will provide access to Customer’s website to allow for editing of customizable content. ICT-yhtiö will support the required server performance of Customer’s website regardless of growth by adding the necessary servers or server resources.

**2.4** ICT-yhtiö will provide customer support to Customer only by email and phone, as follows:

(i) technical assistance, coach, guidance, samples and tutorials;

(ii) answer technical question regarding service architecture, design, modules, functionality;

(iii) provide instructions and help in emergency cases, help resolve blocking issues; and

(iv) help identify the nature of issues and propose a solution or fix. Support will be provided within 24 hours from time of support request during business days. Customer shall be responsible for providing any support services to its third-party clients.

**2.5** ICT-yhtiö is not responsible for emergency cases and will not assume responsibility for server downtime, server delayed response time, network issues, or any other issues caused by interruption or intermittent issues of the underlying hosting service provider.

**2.6** Customer’s payment transactions will be processed through Customer’s own payment account, integrated into the website engine.

**2.7** All information submitted and posted on Customer’s website(s) shall remain the exclusive property of Customer. ICT-yhtiö will not attempt to contact and or enter into any type of business relationship with Customer’s clients. This clause shall survive the termination of this Agreement.

**ARTICLE 3 -** **PRICING**

The pricing for the use of ICT-yhtiö’s Platform and its services under this Agreement are as set forth on the Price page of the ICT-abcde-website, which may change at any time at the sole discretion of ICT-yhtiö and which is incorporated herein by reference.

**ARTICLE 4 -** **PAYMENT**

Customer shall pay the set-up fee and first month’s maintenance fee upon execution of this Agreement. All maintenance fees shall be paid each month, in advance. Customer development fees in arrears upon calculation of by ICT-yhtiö. All payments by Customer to ICT-yhtiö shall be paid by credit card and Customer shall provide any necessary authorizations to continue making charges and shall update its information with ICT-yhtiö as necessary. Any amount not paid within thirty (30) days of the date of ICT-yhtiö invoice or payment processing that is not honored shall bear an interest rate of one percent per month. Customer shall pay all costs of enforcement of the payment of the set-up fees, maintenance fees and development fees, including any court costs and attorney’s fees.

**ARTICLE 5 -** **PUBLISHER PLATFORM RESALE**

Customer agrees not to sell unlimited application plans and offers. Customer also agrees to not sell lifetime or prepaid offers. Customer may only sell packages that appear on the pricing pages of the ICT-yhtiö web site that do not offer unlimited apps. All Customer clients shall be enrolled in the appropriate ICT-yhtiö program through a direct link from the builder main domain or from other subdomains of the same domain. Customer agrees not to create multiple websites with different domain names on which links to Customer’s main domain are placed. Customer must have a separate white label account for each builder website. Customer’s website main domain name cannot be changed after the purchase of the white label account. Customer agrees not to re-sell the Platform and will cooperate with ICT-yhtiö to ensure that third-parties publishers are directed to the ICT-yhtiö website.

**ARTICLE 6 -** **TERM**

The initial term of this Agreement shall commence on the Effective Date noted above and continue thereafter for a period of twelve (12) months (the “**Initial Term**”). Thereafter, this Agreement shall automatically renew for additional periods of twelve (12) months (the “**Renewal Term(s)**”) unless either party provides written notice of termination to the other party at least forty-five (45) days prior the end of the Initial Term or respective Renewal Term, as applicable. In the event ICT-yhtiö provides notice of termination or ceases operation, Customer shall have the right to continue providing mobile app support services to its clients using its own or a third-party content management interface. ICT-yhtiö reserves the right to modify this Agreement, the ICT-yhtiö Terms of Service, the ICT-yhtiö Privacy Policy, or any of its other polices at any time.

**ARTICLE 7 -** **RELATIONSHIP OF THE PARTIES**

Nothing contained in this Agreement shall be construed as creating any agency, legal representative, partnership, or other form of joint enterprise between the parties. Neither party shall have authority to contract for or bind the other in any manner whatsoever. Customer agrees that during the entire term of this Agreement it shall not directly or indirectly, as principal, agent, owner, joint venturer, investor or consultant, solicit or attempt to solicit or induce or encourage the departure or resignation of any of the employees or contractors working for ICT-yhtiö. Customer understands and agrees that soliciting, inducing or hiring ICT-yhtiö employees or contractors may result in serious damages for ICT-yhtiö business and acknowledges that ICT-yhtiö may hold Customer liable for any damages and may seek any legal or equitable relief available to ICT-yhtiö under applicable law.

**ARTICLE 8 -** **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY**

**8.1** ICT-YHTIÖ EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PLATFORM AND SERVICES PROVIDED HEREUNDER WILL BE ERRORFREE, TIMELY, SECURE OR UNINTERRUPTED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ICT-YHTIÖ, ITS EMPLOYEES, LICENSORS OR AGENTS WILL CREATE A WARRANTY; NOR MAY CUSTOMER RELY ON ANY SUCH INFORMATION OR ADVICE.

**8.2** UNDER NO CIRCUMSTANCES WILL ICT-YHTIÖ OR ITS AFFILIATES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE PLATFORM AND SERVICES, INCLUDING, BUT NOT LIMITED TO, RELIANCE ON ANY INFORMATION OBTAINED ON THE PLATFORM OR SERVICES; OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAILS, LOSS OF OR DAMAGE TO DATA, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO ICT-YHTIÖ’S RECORDS, PROGRAMS OR SERVICES. CUSTOMER HEREBY ACKNOWLEDGES THAT THIS PROVISION WILL APPLY WHETHER OR NOT ICT-YHTIÖ IS GIVEN NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND THAT THIS PROVISION WILL APPLY TO ALL SERVICES AVAILABLE FROM ICT-YHTIÖ AND ITS AFFILIATES.

**8.3** UNDER NO CIRCUMSTANCES SHALL ICT-YHTIÖ BE LIABLE FOR DAMAGES BASED ON LOSS OF BUSINESS, OR LOSS OF PROFITS, WHETHER BASED ON BREACH OF AGREEMENT, BREACH OF WARRANTY, PRODUCT LIABILITY, OR OTHERWISE, TO ANY PARTY IN PRIVITY TO THIS AGREEMENT, OR ANY THIRD PARTY.

**8.4** THE TERMS OF THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON, WHETHER BY ICT-YHTIÖ OR BY CUSTOMER.

**ARTICLE 9 -** **FORCE MAJEURE**

If, by reason of failures of telecommunications or internet service providers, labor disputes, riots, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond the control of ICT-yhtiö, ICT-yhtiö is unable to perform in whole or in part its obligations as set forth in this Agreement, then ICT-yhtiö shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make ICT-yhtiö liable to the Customer or other third parties.

**ARTICLE 10** - **GOVERNING LAW; JURISDICTION**

The laws of Finland shall govern the interpretation and enforcement of this Agreement.

The parties consent to the exclusive jurisdiction and venue of the municipal court of Helsinki, Finland.

**ARTICLE 11 -** **INDEMNIFICATION**

Customer agrees to defend, indemnify and hold ICT-yhtiö harmless against any and all claims, losses, penalties, causes of action, damages, liability, costs, expenses (including but not limited to attorney's’ fees and costs) or claims caused by or resulting directly or indirectly from Customer’s use of the Platform or infringement of any third party’s rights, including, without limitation, infringement of any patent, copyright trademark, service mark, trade secrets, right of privacy or publicity or any other third party right. The terms of this Article shall expressly survive the termination or expiration of this Agreement.

**ARTICLE 12 -** **MISCELLANEOUS**

**12.1** Except as otherwise specified in this Agreement, all notices hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (ii) the first business day after sending by email (provided email shall not be sufficient for notices of termination).

**12.2** This Agreement contains no right of assignment by Customer, and Customer shall not assign this Agreement or any of the License content.

**12.3** If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**12.4** All provisions related to intellectual property ownership, restrictions on Customer’s rights, warranties, indemnification, limitation of liability and severability, including, without limitation, the provisions of Articles 1.3, 4, and 7-12, shall survive termination of this Agreement.

**12.5** The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

**12.6** This Agreement constitutes the complete and exclusive statement of the Agreement between the parties regarding the products and services provided hereunder. This Agreement supersedes and replaces any prior Agreements between the parties, or between Customer and any of ICT-yhtiö’s predecessors-in-interest, whether written or verbal.

**12.7** The failure of ICT-yhtiö to enforce a provision of this Agreement shall not be construed as a waiver or limitation of ICT-yhtiö’s right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**12.8** The parties agree that they shall not during, or at any time after the business relationship with the benefactor, use for ourselves or others, or disclose or divulge to others, including future employees or clients, any trade secrets, confidential information, or any other proprietary data of the customer in violation of this Agreement.

**DATE: DATE:**

**PLACE: PLACE:**

**ICT-YHTIÖ OY ASIAKASFIRMA OY**

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