

Fixed Price Agreement

between

Vendor Z Pty Ltd

and

Customer X Limited

Consulting Cloud Preview

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THIS AGREEMENT is made on the date set out in Item 1 of the Schedule A.

BETWEEN

VENDOR Z PTY LTD, a company duly incorporated in the State of Victoria in Australia and having its registered office at xxxxxxxx in that State and its principal place of business for the purposes of the relationship contemplated by this Agreement, at the address noted in Item 2 of the Schedule A. ("**Z**")

AND

The Party described in and having its registered office and principal place of business at the address(es) in Item 3 of the Schedule A. ("**Customer**")

WHEREAS:

- A. The Customer wishes computer software to be developed and installed and to perform particular functions.
- B. Vendor Z is a developer of computer software and has offered its services to the Customer.
- C. Vendor Z and the Customer wish to formalize an arrangement for the development and installation of functioning computer software.

NOW THIS AGREEMENT WITNESSES and it is hereby agreed and declared as follows:

1. Definitions

- 1.1. "Acceptance Criteria" means the rules for processing and outputs of the Developed Software specified in the Project Plan and the Test Management Plan expressly including the level and degree of errors which, while present in the Developed Software, are agreed by Vendor Z and the Customer not to compromise the functionality of the Developed Software.
- 1.2. "Acceptance Test Cases" means a documented set of test cases constructed to verify that the Developed Software meets the Acceptance Criteria.
- 1.3. "Acceptance Test Data" means records, files, and information supplied by the Customer for use in Acceptance Test Operation.
- 1.4. "Acceptance Test Operation" means the process whereby the Customer operates the Developed Software using the Acceptance Test Data for the purpose of determining whether the Developed Software achieves the Acceptance Criteria and operates on, and is compatible with the System..
- 1.5. "Acceptance Test Operation Environment" means amongst other items, the computing hardware, software including any Other Software, communications infrastructure and physical accommodation required for the Acceptance Test Operation, which environment shall be agreed by the parties prior to commencement of Acceptance Test Operation and set out in the Test Management Plan.
- 1.6. "Agreement" means this Agreement and any Schedules and any Annexures hereto.
- 1.7. "Certificate of Acceptance" means a document signed and dated by the Customer stating the Developed Software has met the Acceptance Criteria and Systems Integration.
- 1.8. "Change Request Procedure" means the procedure set out in clause 6 by which changes, variations, amendments and alteration to the Agreement, Specifications and/or Project Plan shall be implemented by the parties as set out in this Agreement.

- 1.9. "Commencement Date" means the date set out in Item 1 of Schedule A.
- 1.10. "Completion Date" means the date for completion of the Warranty Period.
- 1.11. "Confidential Information" means all information disclosed by Vendor Z and the Customer pursuant to this Agreement and relating to the subject matter of this Agreement, the design of the Developed Software and/or the business of Vendor Z or the Customer or any of their respective customers, including personnel, policies and business strategies however it does not include Confidential Information previously known by either Vendor Z or the Customer where such knowledge arose in circumstances not involving any breach of confidence.
- 1.12. "Defect" means a malfunction in the Developed Software caused by errors in the source code or object code with the result that the Developed Software does not or cannot function in accordance with the Specifications or prevents Systems Integration. Expressly excluded are minor matters, errors or anomalies, which do not impact upon said function.
- 1.13. "Developed Software" means all of the source code, object code and Documentation actually developed by Vendor Z in accordance with and as described in the Specifications. A reference to "Developed Software" includes a reference to any discrete part or parts of the Developed Software.
- 1.14. "Development Environment" means, amongst other items, the hardware, software, Other Software and accommodation described in Schedule C required by for the development and installation of the Developed Software.
- 1.15. "Documentation" means manuals and all other material, agreed by the parties, referred to in Schedule D including such items as users' manuals, programming manuals, modification manuals, flow charts and drawings, designed to assist the application of the Developed Software.
- 1.16. "Intellectual Property Rights" means copyright, trademark, design, patent, semi-conductor or circuit layout rights.
- 1.17. "Milestone" means the occurrence of an event, the completion of task or a point in time, as set out in the Project Plan.
- 1.18. "Milestone Payment" means the payment to be made by the Customer to Vendor Z in accordance with this Agreement upon achievement by Vendor Z of each Milestone.
- 1.19. "Milestone Payment Schedule" means the schedule of Milestone Payments set out in Schedule B.
- 1.20. "Official Acceptance" means the Customer has accepted the Developed Software and Systems Integration from Vendor Z in accordance with any subclause of clause 5.
- 1.21. "Other Software" means all computer software, not being Developed Software, required to be used in the supply of the Software Development Services and listed in Item 3 of Schedule B.
- 1.22. "Premises" means the location identified in the Development Environment at which the Software Development Services shall be supplied and, as the context requires, may be referred to as "Customer's Premises" or "Vendor Z's Premises".
- 1.23. "Production Environment" means the hardware and software set out in Schedule E required to be installed whenever the Developed Software is executing in a 'live' environment, as the term is generally accepted.
- 1.24. "Project Management Plan" means a document setting out precise details of how and when the Software Development Services are to be supplied, including such items as, but not limited to, the

chart of project activities, responsibilities and deadlines, and the Test Management Plan, as set out in Schedule F and as amended by agreement between the parties from time to time in accordance with the Change Request Procedure.

- 1.25. "Representatives" means those representatives of each party identified in item 4 of Schedule A or as agreed in writing by the parties from time to time.
- 1.26. "Retention Monies" means an amount that the Customer may withhold from the total payment due to Vendor Z upon achievement of each Milestone, until completion of the Warranty Period for that Milestone.
- 1.27. "Software Development Services" means the services supplied pursuant to this Agreement in order to create, develop and install the Developed Software.
- 1.28. "Specifications" means the specifications set out in Schedule F.
- 1.29. "System" means Customer's information technology and telecommunications system, as varied by Customer from time to time.
- 1.30. "Test Management Plan" means a document, forming part of the Project Plan, incorporating Acceptance Criteria, Acceptance Test Cases and Acceptance Test Data and setting out, amongst other items, how and when Acceptance Test Operation is to be carried out by the Customer.
- 1.31. "Warranty Period" means the number of consecutive days listed in Item 2 of Schedule B immediately following the date of Official Acceptance.

2. Interpretation

- 2.1. In this Agreement unless the contrary intention appears:
- 2.2. A reference to a clause number is a reference to its sub-clauses; and
- 2.3. A reference to a person includes a reference to bodies corporate and unincorporated associations and partnerships; and
- 2.4. Where a word or phrase is given a specific meaning other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- 2.5. Monetary references are references to Australian currency.
- 2.6. Headings are inserted for ease of reference only and have no legal effect.

3. Appointment & Software Development Services to be Supplied

- 3.1. Vendor Z shall supply the Software Development Services to the Customer according to the Project Plan.
- 3.2. The Software Development Services supplied by Vendor Z shall conform in all material Vendor Zs with the Specifications.
- 3.3. Vendor Z must perform the Software Development Services and ensure that the Developed Software operates on, and is compatible with, the System ("System Integration").