

# DBS CO PTY LTD STANDARD TERMS OF AGREEMENT

April 2019



dream · build · ship

DBS Co Pty Ltd  
ABN 72 626 915 811  
PO Box 369 Pyrmont,  
NSW 2009 Australia

# STANDARD TERMS OF ENGAGEMENT

THIS AGREEMENT is made between DBS CO PTY LTD (ABN 72 626 915 811) trading as DREAM BUILD SHIP, and the Client, for the period set out in SCHEDULE B.

WHEREAS:

- A. the Contractor is engaged in the business of providing specialist expertise and services in the software engineering, information technology and project management fields.
- B. the Client wishes to engage the Contractor from time to time, for a project of limited duration and/or utilising skills or expertise which the Client does not have in-house.

IT IS HEREBY AGREED AS FOLLOWS:

## 1. Performance of services

- (a) The Contractor hereby agrees to achieve the agreed outcomes as outlined in Schedule A ("Services") by the agreed date subject to any extension agreed in writing between the parties. Payment of progress payments will be according to the achievement of milestones, and final payments according to the results achieved as set out in Schedule A.
- (b) The Contractor will supply all equipment and tools of trade necessary for the provision of the Services.
- (c) From time to time the Client may request specific scheduled meetings or calls as relevant to the work outlined in Schedule A. In all situations this is subject to the availability and scheduling of the Contractor.
- (d) The Contractor will indemnify the Client for claims or loss arising from a breach of professional duty in the provision of professional services. The liability of the Contractor is reduced to the extent that the Client or other person(s) caused or contributed to the loss or occurrence which gave rise to the claim. In these terms, the Contractor will be liable for the cost of rectifying any defect in the work performed.
- (e) The Contractor will provide the client with an invoice at the end of each milestone indicating the progress made to achieving the performance of the Services and making a claim for a proportion of the contract sum based on the progress achieved.
- (f) Invoices issued by the Contractor are issued on 7 day payment terms.
- (g) The Contractor agrees that this contract is for the obtaining of a result described in SCHEDULE A and any relevant statement of work (as applicable) and unless that result or milestone is achieved, the Contractor will not be entitled to any of the milestone or completion payments if the result is not achieved.

## 2. Relationship between the parties

- (a) This Agreement does not constitute any company, partnership or joint venture between the parties for any purpose. Neither party to this Agreement shall have any right to

incur any liabilities or obligations on behalf of or binding upon the other party except as provided for in that Agreement.

- (b) Nothing in this Agreement constitutes a relationship of employer and employee. The Contractor must not act in any way other than as an independent contractor of the Client.
- (c) The Client will not be responsible for any payments in respect of:
  - (i) the remuneration of the Contractor's personnel including salary and wages, annual leave, sick leave, long service leave or superannuation;
  - (ii) workers' compensation, accident, sickness and life insurance for the Contractor's personnel; and
  - (iii) all taxes including but not limited to corporate tax, payroll tax, PAYG tax, training guarantee levy, FBT, excise duty, GST, personal income taxes, company income taxes, Contractor's payroll taxes, superannuation guarantee levy, health insurance levy and any other additional taxes or levies imposed by government.
- (d) Where agreed, the work carried out to achieve the results set out in this Agreement can be undertaken by another person provided by the Contractor. This arrangement will be subject to the substitute Contractor having the appropriate qualifications and relevant experience, and to the Client's approval. The Client maintains the right to veto the choice of substitute.
- (e) The Contractor will not be subject to the supervision, direction or control on the manner in which the agreed services are rendered, and will maintain a high level of discretion, flexibility and professional judgment as to how the work is performed and results achieved. Checking of the Contractor's work by the Client or co-ordination with other onsite project activities will not constitute control over the Contractor.
- (f) The Contractor acknowledges and hereby agrees that in relation to the supply of the services under this Agreement it is responsible for compliance with all statutory requirements in relation to trading, including but not limited to the payment of all or any taxes, superannuation, workers' compensation or other charge, levy or obligation imposed by law as a result of this Agreement.
- (g) The ownership of any intellectual property, unless in the public domain, generated by or introduced into the services by the Contractor remains at all times with the Contractor unless otherwise specifically agreed in writing.
- (h) All written data to be exchanged by the parties to this Agreement shall be regarded as confidential and shall remain the property of the discloser. All such written data shall be immediately returned to the discloser upon written request or at the expiry of this Agreement.
- (i) These terms (2(a), (b), (c), (d), (e), (f) and (g)) shall have effect from the date of execution and shall survive the Agreement.

### 3. Confidentiality

- (a) The parties agree that confidential information disclosed to the other party remains at all times confidential and each party indemnifies the other in respect to all loss, damage, claim, liability, cost or expense suffered by the discloser arising from any breach of this Agreement.
- (b) The Contractor shall not disclose and shall use its reasonable endeavours to prohibit and prevent the unintentional disclosure of any confidential information concerning the

business, strategic plan, methodologies or any other interests of the Client which may come to its knowledge.

- (c) The Client acknowledges that the methodology and materials of the Contractor, unless in the public domain, are to remain confidential to the Contractor unless otherwise specifically agreed in writing.
- (d) The terms of this confidentiality are to continue for a period of 6 months after the termination of the Agreement or until the information is generally known in the public domain.
- (e) This agreement, its terms, and nature of the services, is not considered confidential information.

#### 4. Termination

- (a) Either party may terminate this Agreement at any time by providing seven days written notice to the other party. Termination by the Client prior to the expiry date will only have legal effect upon payment of:
  - (i) all outstanding invoices up to and including the termination date.
  - (ii) 20% of remaining contracted milestones as liquidated damages.
- (b) At the conclusion of the contract (by expiry or termination), the contract may be renegotiated or extended by mutual agreement.
- (c) The client agrees to give the Contractor 2 (two) weeks notice if the Agreement is not to be renegotiated at expiry.

#### 5. Limitation of Liability

To the maximum extent permitted by law and notwithstanding any other provision of this Agreement, both parties mutually agree to limit liability in respect to services provided under this agreement to be capped at the total value of the agreement as set out in SCHEDULE A.

#### 6. Conflict of Interest

- (a) The Contractor will immediately upon becoming aware of it, notify and disclose to the Client in writing of any conflict of interest where it may materially affect the Contractor's ability to perform any obligations in this Agreement.
- (b) The Contractor will, within 5 business days after giving notice, inform the Client of steps taken to resolve any conflict of interest.
- (c) If the Client considers those steps inadequate, the Client may opt to terminate the agreement as outlined in Section 4.

#### 7. Waiver

If either party shall waive any breach of this Agreement or forbear to enforce any part of it on any one or more occasions, such waiver or forbearance shall not be taken as evidence

against that party and shall not preclude that party from subsequently enforcing any part of this Agreement.

#### 8. Disputes

If any dispute arises involving the performance of this contract or the interpretation of its terms, before resort to legal action is had by either party, it is agreed that if negotiations fail, the parties shall utilise mediation with each party bearing their own costs.

#### 9. Governing law

This Agreement shall be governed by and construed in accordance with NEW SOUTH WALES law and the parties to this Agreement agree to submit, subject to clause (8), to the jurisdiction of its Courts.

#### 10. Notices

Unless otherwise specified in the Agreement or documents collateral to this Agreement, all notices or communications of a contractual nature given in relation to this Agreement by either party to the other party shall be in writing and delivered as per SCHEDULE B.