

# Fixed Price Services Agreement



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## AGREEMENT

As a result of you ("Customer") and the Hornbill Group company identified in the Order Form ("Hornbill") signing or otherwise accepting an Order Form in connection with fixed price Professional Services, these are the terms (referred to in the Order Form) upon which Hornbill shall supply those services to you. For the avoidance of doubt, there is no contract to supply any such service until the Order Form has been explicitly accepted by Hornbill in writing or electronically.

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## 1. DEFINITIONS

In these terms, unless the context otherwise requires, the following words and expressions mean:

"Professional Services"	the provision for the Customer by Hornbill or its contractors of technical, training and advisory services as defined in the Statement of Work
"Intellectual Property"	any and all copyright and all related rights, neighbouring rights including any rights relating to unauthorised extraction or reutilisation, design rights and any other intellectual property rights whether registered or not
"Hornbill Intellectual Property"	Intellectual Property owned by Hornbill consisting of original work and materials undertaken by Hornbill either previously or in performing its obligations under these terms
"Confidential Information"	Any non-public information relating to either party or its supplier, agents, distributors, subscribers or customers together with any information clearly identified in writing as confidential
"Order Form"	any electronic or hard copy document signed or otherwise accepted by the parties in writing (including email) incorporating these terms and setting out the commercial terms upon which the Professional Services are to be supplied to Customer
"Statement of Work"	Document that lists and defines all the tasks, activities and deliverables to be delivered for a fixed price under this agreement
"Price"	A sum net of VAT agreed by both parties and listed on the Order Form to be paid by Customer to Hornbill for the delivery of the Professional Services to achieve the work defined in the Statement of Work onto which VAT at the prevailing rate will be added if applicable

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## 2. COMMERCIAL BASIS AND CHARGES

Hornbill shall, subject to and in accordance with these terms and any applicable Order Form provide the Professional Services on a fixed price basis and accomplish the tasks, activities and deliverables set out in the Statement of Work.

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## 3. CONFIDENTIALITY

Any Confidential Information which comes into the possession of the other party as a result of the operation of this agreement shall be treated as confidential and shall not be disclosed to any person other than employees of such party requiring such information in pursuance of this agreement, neither shall it be used by the receiving party other than in pursuance of this agreement without the prior written consent of the party to whom it relates. Each party will ensure that employees involved with this agreement are aware of and comply with the provisions of this clause. This clause shall not apply to any information which is in or comes into the public domain other than by a breach of this agreement.

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## 4. CUSTOMER OBLIGATIONS

- 4.1 The Customer shall promptly provide Hornbill with any information the Customer is aware of which Hornbill may reasonably require from time to time to enable it to perform its obligations under this agreement.
- 4.2 The Customer shall ensure that any deliverables that are their responsibility are delivered within 14 days of Hornbill requesting them in writing.

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## 5. ACCEPTANCE

- 5.1 On completion of the Professional Services, Customer shall satisfy itself that the activities, tasks and deliverables as listed in the Statement of Work have been completed in a satisfactory manner. In coming to such a determination Customer may only use criteria reasonably derived from the Statement of Work. If the works undertaken under this agreement are in conjunction with the installation and configuration of a standard software product from Hornbill, for the avoidance of doubt, any acceptance criteria cannot contradict the then standard product documentation unless the criteria are derived explicitly from the Statement of Work.
- 5.2 Customer shall determine its acceptance of the Professional Services within a reasonable timeframe from the completion of the Professional Services and in any case within a time period of 1 week or 20% of the project duration whichever is the greater.
- 5.3 If the Customer reasonably determines that it doesn't accept the successful completion of the Professional Services, then it shall clearly document any failures in writing to Hornbill within one week of such determination and shall give Hornbill a

reasonable time to rectify the documented issues prior to Customer re-assessing its acceptance of the Professional Services. Following three determinations by Customer that it does not accept the Professional Services, the dispute procedure shall be invoked.

- 5.4 The Professional Services will be deemed accepted by Customer should Customer fail to notify Hornbill of failure of acceptance within the timelines identified in this clause 5.

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#### 6. PAYMENT

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- 6.1 Payment of the Price shall be made by Customer in 3 stages – 20% of the Price on the commencement of the Professional Services, 20% of the Price at a point identified in the Statement of Work when all design specifications have been agreed and 60% of the Price on successful acceptance by Customer of the completion of the Professional Services unless an alternative payment plan is agreed on the Order Form.
- 6.2 In the event that the Customer fails to comply with clause 4.2 Hornbill may immediately invoice the final 60% detailed in clause 6.1

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#### 7. VARIATION OF SCOPE OF WORKS

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- 7.1 If Customer wishes to vary the works to be carried out, then it shall communicate the details of the change in writing to Hornbill who will assess the effect of the required change in terms of any increased cost. If there is no increase in cost and subject to any considerations of technical feasibility, Hornbill shall accept and include such a change.
- 7.2 If in Hornbill's sole reasonable determination the requested change does require an increase in cost, then Hornbill shall communicate same to Customer in writing who if they wish to proceed with the change shall authorize the change and the Price will increase accordingly.
- 7.3 If Customer wishes to remove items from the Statement of Works Hornbill shall agree to this but the full Price shall still be payable.

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#### 8. CANVASSING OF STAFF

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Neither party shall within a period of six months after the most recent provision of any Professional Services approach directly with a view to employing, engaging or sub-contracting on any basis whatsoever any person who has been involved in this agreement under the employ of the other party.

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#### 9. TERMINATION

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- 9.1 Either party may terminate these terms by written notice to the other if:
- 9.1.1 the other party commits any breach of any provision of these terms which is capable of remedy and that other party fails to remedy the breach within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied
  - 9.1.2 the other party commits any breach of any provision of these terms which constitutes a material breach
  - 9.1.3 the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business
- 9.2 Should this agreement be terminated by Hornbill in accordance with 9.1 above, then all remaining fees under this agreement being the Price minus the amount paid by Customer to date become due.

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#### 10. INTELLECTUAL PROPERTY RIGHTS

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- 10.1 The Hornbill Intellectual Property shall belong to Hornbill absolutely.
- 10.2 Customer is hereby granted a non-exclusive, perpetual and royalty free licence to use Hornbill Intellectual Property for Customer's own internal use only, provided that such Intellectual Property does not already form part of Hornbill's existing standard commercial software or SaaS suite. For the avoidance of doubt, the use by Customer of such existing standard commercial software or SaaS suite is the subject of a separate agreement or agreements between Hornbill and Customer.

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#### 11. SERVICE STANDARDS

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Hornbill shall use all reasonable care in the provision of the Professional Services which shall be performed in a professional manner. To the maximum extent permitted by applicable law, Hornbill disclaims all other warranties and conditions, express and implied, including but not limited to implied warranties, conditions and other terms of merchantability, satisfactory quality and/or fitness for purpose with respect to the Professional Services.

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#### 12. LIABILITY LIMITATIONS

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- 12.1 To the maximum extent permitted by applicable law, neither party shall be liable to the other for:
- 12.1.1 loss (whether direct, indirect or incidental) of business revenues, business profits, business interruption, loss of business information, or other pecuniary loss;
  - 12.1.2 any consequential, special or indirect loss or damages whatsoever;

- 12.2 In each case, whether arising out of the performance of its obligations under these terms or any Order Form or otherwise, and even if the other party has been advised of the possibility of such damages, each party's maximum liability under this agreement whether for damages for negligence, breach of contract any cause of action in contract, tort or strict liability or otherwise shall be limited to the amount actually paid by Customer in the case of default by Hornbill, or shall be limited to the amount payable by Customer in the case of default by Customer under these terms in the 12 months preceding the event giving rise to such possible damages.
- 12.3 In the event that any court of competent jurisdiction rules any limitation of liability invalid or unenforceable, the total aggregate liability of the defaulting party shall not exceed the total sum which that party may recover with respect to its liability for such loss or damage under its corporate or organizational insurance(s).
- 12.4 The exclusions and limitations in this Clause 12 do not apply in respect of (i) death or personal injury caused by the negligence of the other party or its employees acting in the course of their employment, (ii) fraudulent misrepresentation or (iii) any other liability which cannot be excluded under applicable law.

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### 13. DATA PROTECTION

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- 13.1 For the purposes of this Agreement "DPA" means the Data Protection Act 1998 as this Act is for the time being in force and includes any subordinate legislation made under that Act and any provision amending, superseding or re-enacting it and "Data", "Processing", "Personal Data" and "Information Commissioner" bear the meanings set out in the DPA
- 13.2 The Customer acknowledges that in connection with the performance of its obligations under this agreement Hornbill may carry out processing on personal data, including sensitive personal data, relating to employees of the Customer ("Customer Personal Data"). Hornbill warrants that it will carry out such operations in compliance with any applicable data protection or privacy legislation in force from time to time, and shall, without limitation to the foregoing take appropriate technical and organisational measures against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customers Personal Data, only disclose Customer Personal Data or with the prior written approval of the Customer, subject to the non-disclosure exemptions set out within the DPA. In the event that Hornbill receives a request for subject access from an individual about whom Hornbill holds Customer Personal Data for the purposes of fulfilling its obligations under these terms, or a request for such information from the Information Commissioner, then, subject to complying with its obligations under the DPA, Hornbill shall promptly notify such employee of the Customer as is nominated for this purpose of such request and respond promptly to any request for information made by the Customer in respect of such subject access request or request for information from the Information Commissioner
- 13.3 The Customer acknowledges that it is solely responsible for the creation of all Customer Personal Data upon which Hornbill carries out processing under this agreement. The Customer shall make obtain and maintain all necessary notifications authorisations and consents the Customer is required to have for the Processing of Customer Personal Data to be carried out by Hornbill under these terms. Hornbill acknowledges that Customer Personal Data in the possession of Hornbill shall at all times remain the property of Customer. Hornbill warrants that Customer Personal Data for European Customers will not be transferred outside the European Economic Area ("EEA") without the Customer's prior consent
- 13.4 The Customer hereby instructs Hornbill to carry out such processing on Customer Personal Data as is reasonably required by Hornbill to perform its obligations under this agreement. The Customer may vary the instruction given by this clause 13.4 with respect to the processing of Customer Personal Data at any time by written notice to Hornbill provided that Hornbill shall have no liability of any kind to the Customer for any loss or damage suffered by or claim made by any person against the Customer arising directly or indirectly from Hornbill complying with such notice

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### 14. GENERAL

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- 14.1 Entire agreement - Neither party has been induced to enter into these terms by a statement or promise which it does not contain. These terms and any applicable Order Form constitute the entire agreement between Hornbill and the Customer with respect to either party's obligations to the other under these terms or any Order Form and supersedes all previous communications, representations and agreements either written or oral (save for fraudulent misrepresentation) with respect thereto. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of these terms. The application of any general terms and conditions upon which Customer trades or which it seeks to impose by inclusion in any purchase order or which may arise by way of course of trading or otherwise are excluded and shall be of no effect.
- 14.2 Assignment - The Customer may not assign, transfer or otherwise dispose of any of its rights or obligations under these terms without the prior written consent of Hornbill. Subject to the foregoing, these terms will bind and inure to the benefit of any successors and assigns. Hornbill may use subcontractors in the performance of its obligations under these terms or any Order Form but will remain liable to the Customer in accordance with this agreement for the Services provided
- 14.3 Governing law - This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14.4 Separable - Each provision of these terms shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of these terms and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 14.5 Relationship between the parties - The relationship of Hornbill to the Customer is solely that of independent contractor, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, partnership, commission agency and or other business relationship between the parties

- 14.6 Variation - Any variation of these terms or any Order Form must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.
- 14.7 Third party rights - The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 14.8 Dispute resolution - Each party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning these terms, any Order Form or any documents incorporated by reference therein using internal escalation procedures or external mediation as may be agreed. But this clause shall not prevent either party from taking such legal proceedings as it shall decide.
- 14.9 Force majeure - Notwithstanding anything else contained in these terms, neither party shall be liable for any delay in performing its obligations under these terms or any Order Form if such delay is caused by circumstances beyond its reasonable control and any delay caused by any act or omission of the other party (whether or not such act or omission constitutes a breach of these terms) or a third party provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned.
- 14.10 Survival - The following clauses shall survive any termination of these terms: 3, 8, 10, 12.

In Process