

# Kalman | Systems+ Contractor Agreement

## Parties:

Company	Name: Kalman Systems Pty Ltd ABN 72 660 552 670
	Contact: Mahesh Shastry
	Address: <i>[insert]</i>
	Email: <i>[insert]</i>

Contractor	Name: <i>[insert]</i> <i>[ABN]</i>
	Address: <i>[insert]</i>
	Email: <i>[insert]</i>

## Key Agreement Details:

Commencement Date	<i>[insert]</i>
Initial Term	<i>[insert the period for which the agreement should apply (starting from the Commencement Date above)]</i>
Services	The Contractor must provide the deliverables set out in Schedule 1 or as otherwise agreed in writing ( <b>Deliverables</b> ) in accordance with the milestones set out in Schedule 1 or as otherwise agreed in writing ( <b>Milestones</b> ).
Qualifications and Licences	<i>[insert]</i> or N/A
Work Times	<i>[insert]</i> or remove if not applicable
Fees	Unless otherwise agreed, the Fees will be payable upon completion of the Deliverables in accordance with each Milestone.
Payment Due Date(s)	Unless otherwise agreed, the Payment Due Date(s) will be the date the Deliverables are handed over, in accordance with the Milestones set out in Schedule 1.

This agreement (which includes this cover page and the attached terms and conditions) sets out the terms under which the Contractor will provide services to the Company (**Contractor Agreement**) as an independent contractor.

By signing below, the parties agree to the terms and conditions of this Contractor Agreement.

<b>Signed</b> for and on behalf of <b>Kalman Systems</b> by a duly authorised person:	
Signature	Full name
<b>Signed</b> for and on behalf of <b>The Contractor</b> by a duly authorised person:	
Signature	Full name

# CONTRACTOR AGREEMENT

## Terms and Conditions

### 1 TERM

- (a) This agreement commences on the Commencement Date and will continue for the Initial Term and any Renewal Term agreed pursuant to clause 1(b), unless terminated earlier in accordance with its terms (the **Term**).
- (b) At any time prior to the expiry of the Initial Term, the parties may agree in writing to extend the term of this agreement an additional period (**Renewal Term**), in which case the operation of this agreement will be extended for the Renewal Term.

### 2 THE CONTRACTOR'S OBLIGATIONS

#### 2.1 PROVISION OF SERVICES

During the Term, the Contractor must provide the Services to the Company in accordance with this agreement.

#### 2.2 STANDARD OF SERVICES

The Contractor must provide the Services to the Company:

- (a) in accordance with the Company's reasonable directions;
- (b) in accordance with the Company's policies (as notified to the Contractor from time to time);
- (c) in accordance with all applicable Laws, tax obligations and industry standards;
- (d) with due care and skill and in a professional, punctual and diligent manner; and
- (e) in a manner so that the Services are fit for their intended purpose.

#### 2.3 QUALIFICATIONS AND LICENCES

- (a) The Contractor must at all times during the Term hold any qualification, clearance or licence that a reasonable person in the Contractor's position would hold or is required for the Contractor's role as notified to the Contractor from time to time by Kalman Systems, and any Qualifications and Licences set out in the Key Details.
- (b) The Contractor warrants that they hold the Qualifications and Licences, will maintain them for the Term, and will comply with any and all terms of the Qualifications and Licences.

#### 2.4 TIME

The Contractor must ensure that the Services are performed at the Work Times and in accordance with Schedule 1.

#### 2.5 REPORTS

If requested by the Company, the Contractor must promptly provide a comprehensive report to the Company about any aspect of the provision of the Services, presented in a form and manner reasonably required by the Company.

#### 2.6 NON-COMPETE & NON-SOLICITATION

- (a) During the Term and for a period of **6 months** thereafter, the Contractor must not, without the Company's prior written approval:
  - (i) undertake work that is competitive with any business or activity carried on by the Company;
  - (ii) undertake work that conflicts or potentially conflicts with the Contractor's obligations under this agreement; or

- (iii) employ or engage (or be knowingly involved in either employing or engaging) any officer, employee, contractor, client, customer or supplier of the Company, which the Contractor had any contact with during the Term.
- (b) Notwithstanding this clause 2.6, the Contractor may conduct other work in Australia that conflicts or potentially conflicts with the Contractor's obligations under this agreement if the Company grants the Contractor written approval, in the Company's absolute discretion.

## 2.7 INSURANCE

At all times during the Term (unless otherwise agreed in writing), the Contractor must affect and maintain adequate insurance to cover the Contractor's risks and liabilities under this agreement, including professional indemnity insurance, errors and omissions insurance, public liability insurance, and work health and safety insurance.

## 3 DELIVERABLES

### 3.1 PROVISION OF DELIVERABLES

The Contractor must provide the Deliverables in accordance with:

- (a) the details set out in Schedule 1 or as otherwise agreed in writing;
- (b) the due dates set out in Schedule 1 or as otherwise agreed in writing; and
- (c) any other directions reasonably provided by Kalman Systems.

### 3.2 ACCEPTANCE OF DELIVERABLES

- (a) A Deliverable will only be taken to have been performed once it is accepted by Kalman Systems.
- (b) A Deliverable will only be taken to have been accepted by Kalman Systems upon written notification by Kalman Systems to the Contractor that Kalman Systems is satisfied that the Deliverable has been accepted (**Acceptance**).
- (c) Kalman Systems may review each Deliverable to confirm that the Deliverable complies with this agreement. The Contractor must provide reasonable assistance to Kalman Systems to enable them to conduct a review of the Deliverable.
- (d) Where Kalman Systems does not Accept a Deliverable, without prejudice to Kalman Systems' other rights and remedies, Kalman Systems may at its option:
  - (i) require the Contractor to rectify or replace the Deliverable (at the Contractor's expense) and resubmit it for Kalman Systems' review, which the Contractor must do within **5 Business Days** (unless otherwise agreed in writing);
  - (ii) Accept the Deliverable subject to a reasonable reduction in the Fees;
  - (iii) Accept the Deliverable on terms acceptable to the parties; or
  - (iv) reject the Deliverable in which case no amount is payable by Kalman Systems in respect of the Deliverable.

### 3.3 RIGHT TO TERMINATE

The Contractor acknowledges and agrees that Kalman Systems may terminate this agreement in accordance with clause 12 if:

- (a) it fails to comply with this clause 3; or
- (b) a Deliverable is not Accepted in accordance with clause 3.2.

## 4 PAYMENT

### 4.1 FEES

- (a) In consideration for the Contractor's performance of the Services, the Company must pay the Contractor the Fees.

- (b) The Company will reimburse the Contractor for any expenses incurred by the Contractor (on a zero margin, pass through basis) provided that:
  - (i) the Contractor has obtained the written approval of the Company prior to incurring such expenses; and
  - (ii) the Contractor provides supporting documentation, such as receipts, for such expenses.
- (c) The Contractor agrees that the Fees and the reimbursements referred to in this clause 4.1 are the only fees or financial benefits that the Contractor is entitled to in connection with this agreement and no additional charges or entitlements may be made or claimed by the Contractor.

#### 4.2 INVOICES

- (a) The Contractor must submit to Kalman Systems a tax invoice for Services provided by the Contractor upon completion of the relevant Milestone, detailing the services performed during the relevant period. The agreed dates for submitting invoices shall be as specified in writing by the parties.
- (b) Payment terms for the invoices shall be **30 days** from the date of receipt by Kalman Systems.

#### 4.3 SUPERANNUATION

If required by law, Kalman Systems will make superannuation payments on the Contractor's behalf at the super rate as required under applicable superannuation guarantee legislation. These payments will be made to a preferred fund selected by Kalman Systems or a complying superannuation fund of the Contractor's choice.

### 5 GST

- (a) Unless otherwise specified, each consideration or payment obligation in this agreement is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount is payable by the party providing consideration for the Supply equal to the amount of GST payable on that Supply as calculated by the party making the Supply in accordance with *A New Tax System (Goods and Transitional Business Continuity Services Tax) Act 1999 (Cth) (GST Act)*.
- (c) Any capitalised term in this clause which is not defined in this clause has the meaning given to that term in the GST Act.

### 6 RELATIONSHIP

- (a) The relationship between the Company and the Contractor is of a principal and an independent contractor. Nothing in this agreement constitutes or deems the Contractor to be an employee or agent of the Company.
- (b) The Contractor must not hold itself out as being entitled to contract or accept payment in the name of or on account of the Company.

### 7 SUBCONTRACTORS

- (a) The Contractor acknowledges and agrees that they will perform the Services personally, and that the Contractor must seek the Company's prior written approval before allowing any third party (including any employee of the Contractor) to perform any part of the Services.
- (b) The Contractor must not subcontract any part of the Services without obtaining the prior written approval of the Company.
- (c) The Contractor is responsible for the acts or omissions of its subcontractors as if they were the acts or omissions of the Contractor.

- (d) The Contractor will promptly provide the Company with copies of any contracts with its subcontractors upon request.

## **8 CONFIDENTIALITY**

### **8.1 CONFIDENTIAL INFORMATION**

The Contractor will not, during or after the Term, disclose Confidential Information directly or indirectly to any third party except:

- (a) with the Company's prior written consent;
- (b) as required by Law; or
- (c) to the Contractor's approved subcontractors on a need to know basis for the purposes of performing its obligations under this agreement (**Additional Disclosees**).

### **8.2 BREACH**

If the Contractor become/s aware of a suspected or actual breach of this clause 8 by the Contractor, Contractor Personnel or an Additional Disclosee, the Contractor will immediately notify the Company and take reasonable steps required to prevent, stop or mitigate the suspected or actual breach.

### **8.3 USE**

The Contractor may only use the Confidential Information of the Company for the purposes of exercising its rights or performing its obligations under this agreement.

### **8.4 RETURN**

On termination of this agreement, or on request by the Company, the Contractor must promptly return to the Company or destroy all Confidential Information of the Company in the possession or control of the Contractor.

### **8.5 ADDITIONAL DISCLOSEES**

The Contractor will ensure that Additional Disclosees keep the Confidential Information confidential on the terms provided in this clause 8. The Contractor will on request by the Company arrange for an Additional Disclosee to execute a document in a form reasonably required by the Company to protect Confidential Information.

## **9 INTELLECTUAL PROPERTY & MORAL RIGHTS**

### **9.1 NEW MATERIAL**

Intellectual Property Rights in New Material are immediately assigned to and vest in the Company as those rights are created.

### **9.2 EXISTING MATERIAL**

Each party retains ownership of Intellectual Property Rights in Existing Material and nothing in this agreement transfers ownership or assigns any Intellectual Property Rights in Existing Material of a party to the other party.

### **9.3 LICENCE**

To the extent that any of the Contractor's Existing Material is incorporated in the New Material, the Contractor grants to the Company a perpetual, irrevocable, transferable, worldwide and royalty-free licence (including the right to sublicense) to use, copy, modify and adapt the Contractor's Intellectual Property Rights in such Existing Material in order for the Company to use, exploit or otherwise enjoy the benefit of the New Materials.

### **9.4 THIRD PARTY INTELLECTUAL PROPERTY**

The Contractor warrants that:

- (a) the Contractor's performance of the Services and provision of the Services to the Company; and
- (b) the Company's receipt and use of the Services, New Materials and the Contractor's Existing Materials,

will not infringe the Intellectual Property Rights of any third party.

## 9.5 MORAL RIGHTS

To the extent that the Contractor has Moral Rights in the New Material or Existing Material, the Contractor gives a Moral Rights Consent. To the extent that a person, other than the Contractor or Contractor Personnel, has Moral Rights in the New Material or Existing Material, the Contractor will obtain a Moral Rights Consent from that person, and provide it on request by and in a form acceptable to the Company.

## 10 PRIVACY

- (a) The Contractor must comply, and ensure that its Personnel comply, at all times with Privacy Laws.
- (b) Without limiting or otherwise affecting clause 10(a), the Contractor must:
  - (i) ensure Personal Information held or handled by it in connection with this agreement is protected against misuse, interference and loss and against unauthorised access, use, modification or disclosure;
  - (ii) immediately notify the Company if:
  - (iii) it becomes aware or suspects there has been an unauthorised use, copying, or disclosure of, or other security breach in relation to, Personal Information held or handled by it in connection with this agreement, or
  - (iv) it becomes aware that a disclosure of Personal Information held by it in connection with this agreement is, or may be, required by Law;
  - (v) not do anything with Personal Information that will cause the Company to breach any Privacy Law; and
  - (vi) comply with any reasonable request, direction or inquiry made by the Company in relation to Personal Information or the Privacy Laws.
- (c) In this clause 10, "**Privacy Laws**" means the *Privacy Act 1988* (Cth), including the Australian Privacy Principles, and the guidance and codes of practice issued by the Office of the Australian Information Commissioner from time to time, and other capitalised terms have the meaning given in that Act.

## 11 LIABILITY

### 11.1 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 11.1(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the Company to the Contractor in the 3 months preceding the date of the event giving rise to the relevant liability.
- (b) Clause 11.1(a) does not apply to the Contractor's liability in respect of loss or damage sustained by the Company arising from the Contractor's breach of clauses 2.3, 2.6, 2.7, 8 and 9.

### 11.2 CONSEQUENTIAL LOSS

- (a) To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by the Contractor, except:
  - (i) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or

- (ii) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).
- (b) Clause 11.2(a) does not apply to the Contractor's liability in respect of loss or damage sustained by the Company arising from the Contractor's breach of clauses 2.3, 2.6, 2.7, 8 and 9.

## 12 TERMINATION

### 12.1 TERMINATION FOR CONVENIENCE

- (a) Either party may end this agreement for no reason, by providing notice to the other party.
- (b) This agreement will end **10 Business Days** after the day the notice is sent (the **End Date**).
- (c) On the End Date, the Contractor will provide an invoice to the Company for:
  - (i) any Fees for Services already performed up to the End Date (including Services performed to prepare not yet completed deliverables); and
  - (ii) any pre-approved third party costs the Contractor has incurred on the Company's behalf up to the End Date,(together, the **Outstanding Amounts**)
- (d) The Company will pay the Outstanding Amounts to the Contractor within a further **20 Business Days** after receipt of a correctly invoice in relation to the Outstanding Amounts, unless otherwise agreed between the parties.
- (e) Once the Outstanding Amounts have been paid, the Contractor will hand over any completed deliverables.

### 12.2 TERMINATION FOR BREACH

- (a) If a party (the **Notifying Party**) considers that the other party is in breach of this agreement (the **Breach**), the Notifying Party may provide a notice to the other party.
- (b) The notice must include the nature and details of the Breach, with reference to the relevant clause/s of this agreement. The Notifying Party may, if it wishes to do so, make suggestions for resolving the Breach.
- (c) The other party will have 10 Business Days (or longer, in the Notifying Party's discretion) to rectify the Breach (the **Rectification Period**).
- (d) After the Rectification Period, the Notifying Party will:
  - (i) if the Breach has been successfully rectified, notify the other party that the agreement will continue; or
  - (ii) if the Breach has not been successfully rectified, notify the other party that this agreement is terminated (**Termination for Breach Notice**).
- (e) Following a Termination for Breach Notice, the parties will stop all work under this agreement unless otherwise agreed.
- (f) Any disputes regarding termination under this clause must be dealt with in accordance with clause 13. The indemnities in clause 11 will apply to any disputes and resulting claims. Any pre-estimated losses in clause 12.1 will not limit or otherwise effect the Company's rights under this agreement, at law or otherwise in equity; the Company's losses resulting from the Contractor's breach are likely to far exceed its losses resulting from termination for the Contractor's convenience.

### 12.3 OTHER CONSEQUENCES FOR TERMINATION

If this agreement ends, in addition to the specific consequences set out in clause 12.1 or 12.2 (as applicable), the parties will:

- (a) return all property and Confidential Information to the other party;
- (b) comply with all obligations that are by their nature intended to survive the end of this agreement; and

- (c) stop using any materials that are no longer owned by, or licensed to, them when this agreement ends in accordance with clause 9.

### **13 IF THE PARTIES HAVE A DISPUTE**

- (a) If an issue between the parties arises under this agreement that cannot be resolved day-to-day, the parties will make genuine efforts in good faith to participate cooperatively in mediation, at equal shared expense of the parties.
- (b) The parties will conduct mediation through the Australian Disputes Centre (**ADC**) and in accordance with the ADC's Guidelines for Commercial Mediation (as current at the time of the dispute).
- (c) The parties will follow the mediator's recommendations on the extent of mediation required, and when to stop mediation if the issue cannot be resolved.
- (d) If mediation does not resolve the issue, the parties must:
  - (i) if they haven't already done so, engage independent legal representation at their own expense to understand the strength of their arguments; and
  - (ii) based on that advice, if settlement is not achieved, participate in arbitration (or other dispute resolution mechanism agreed in mediation) through the ADC at equal shared expense.
- (e) The parties will follow the binding outcome of arbitration (or other agreed mechanism).
- (f) Either party may at any time during this process make an offer for settlement. The parties acknowledge and agree it is in their best interests to properly consider all genuine settlement offers. The parties will use best endeavours to avoid litigation and reach a prompt settlement.
- (g) The process in this clause does not apply where a party requires an urgent injunction.

### **14 NOTICES**

- (a) Any notices required to be sent under this agreement must be sent via email using the party's email addresses set out in the Key Agreement Details and the email's subject heading must refer to the name and date of this agreement.
- (b) If no email address is stated in this agreement, the notice may be sent to the email address most commonly used by the parties to correspond in relation to this agreement at the time the notice is sent.
- (c) The notice will be considered to be delivered 24 hours after it was sent, unless the sender has reason to believe the email failed to send or was otherwise not delivered or received.

### **15 GENERAL**

#### **15.1 GOVERNING LAW AND JURISDICTION**

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

#### **15.2 AMENDMENTS**

This agreement may only be amended in accordance with a written agreement between the parties.

#### **15.3 WAIVER**

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.



15.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

15.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

15.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

15.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

15.8 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

15.9 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

15.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or "dollar", is to Australian currency, unless otherwise agreed in writing.

**DEFINITIONS**

In addition to capitalised terms defined in the Key Agreement Details above, capitalised terms used in this agreement will have the following meanings:

<b>Term</b>	<b>Meaning</b>
<b>Additional Disclosee</b>	has the meaning given to it in clause 8.1.
<b>Business Day</b>	means a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Sydney.
<b>Confidential Information</b>	means information of or provided by the Company to the Contractor that is by its nature confidential information, is designated by the Company as confidential, or the Contractor knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.
<b>Existing Material</b>	means Material, other than New Material
<b>Intellectual Property Rights</b>	means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this agreement.
<b>Laws</b>	mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Services are performed or received and includes any industry codes of conduct.
<b>Material</b>	means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.
<b>Moral Rights</b>	means the moral rights granted under the <i>Copyright Act 1968</i> (Cth), and any similar rights existing under foreign laws.
<b>Moral Rights Consent</b>	means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the New Material or Existing Material by or on behalf of the Company, its personnel, any licensee or its successors or assigns.
<b>New Material</b>	means Material that is created, written, developed or otherwise brought into existence by or on behalf of the Contractor in the course of providing the Services.
<b>Personnel</b>	means, in relation to a party, any employees, secondees, agents and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors of that party.

**Schedule1 - Services, Deliverables and Milestones**

[insert]