
SOFTWARE DEVELOPMENT AGREEMENT

Calvert Network Solutions Pty Ltd trading as Calvert Technologies

ABN 84 087 221 305



CALVERT

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THIS AGREEMENT takes effect from the day we begin working together.

PARTIES

1. **Calvert Network Solutions Pty Ltd trading as Calvert Technologies ACN 108 835 874** of 495 Payneham Road, Felixstow SA 5070 ('**Calvert Technologies**')
2. **You - the business we are supporting and working with ('the Customer')**

ASSOCIATED DOCUMENTS

This agreement does not stand in isolation. The Calvert Technologies **Master Service Agreement**, and Calvert Technologies **Terms and Conditions of Sale and Service** form the overall agreement. Copies of these documents may be found at <https://calvert.net.au/legal>

BACKGROUND

The Customer wishes to engage Calvert Technologies to carry out and provide the Products and Services on the terms and conditions of this Agreement.

1. OPERATIVE PROVISIONS

1.1 Definitions

In this Agreement the following words have the following meanings, unless the context requires otherwise:

Agreement means this agreement including any Schedules and Statements of Work.

Claim includes any claim, action, demand or proceeding

- (a) under, arising out of, or in any way in connection with this Agreement;
- (b) arising out of, or in any way in connection with the Products or Services or either party's conduct before the Commencement Date; or
- (c) arising otherwise at law including in equity, by statute, tort for negligence or otherwise, contract, for restitution or unjust enrichment.

Commencement Date means the commencement date stated in the Agreement Particulars.

Confidential Information means information of the party that:

- (d) is, by its nature, confidential;
- (e) is designated by the party as confidential;
- (f) is marked 'Confidential', 'Commercial-in-Confidence', or with any other description which would indicate that it is confidential; or
- (g) the other party knows, or ought to know, is confidential,

but does not include information which by law is required to be disclosed or is, or becomes, public knowledge other than by:

- (h) a breach of any undertaking by Calvert Technologies; or
- (i) any other unlawful means.

Deliverables means any deliverables set out in a Statement of Work.

Derivative Work [as an adaption] shall mean a work that is [substantially] based on any pre-existing works, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which such pre-existing works may be recast, transformed, or adapted, and that, if prepared without authorisation of the owner of the copyright in such pre-existing work, would constitute a copyright infringement under the Australian Copyright Act.

Derivative Work [as an extension] shall mean a work that is [substantially] based on any pre-existing works.

Fees means the amounts to be paid as specified in the relevant Statement of Work or Schedule or the amounts payable for Services provided under a Simple Service Request.

Liability all liabilities, costs, damages, losses, expenses, and outgoings of whatever description, including the costs and expenses of defending or settling any Claim.

Licensed Software means software that is, or will be, installed on the Customer's Equipment.

Open Source License Agreement means the terms under which Software is licensed in source code form to the general public for use without charge, including without limitation any license agreement that

- (j) conditions the use or distribution of any Software program that incorporates such Software on the disclosure, licencing or distribution of the source code of such program (including such Software) and
- (k) otherwise materially limits a licensee's freedom of action with regard to seeking compensation in connection with licensing or distributing such program or Software in object code form, including without limitation the GNU General Public License or the GNU Lesser General Public Licence.

Open Source Software means Software licensed pursuant to the terms of an Open Source Licence Agreement.

Payment Terms means the payment terms set out in the relevant Statement of Work or, for a Simple Service Request, the payment terms set out in clause **Error! Reference source not found.**

Professional Services means the consulting and project services provided under a Statement of Work.

Schedule shall mean the delivery dates for each Deliverable.

Specifications shall mean the specifications for the Software as directed by Customer, together with any modifications that may be agreed to in writing by the parties during the term of this Agreement.

Services means the services specified in the relevant Statement of Work, Schedule or Simple Service Request and includes an Online Service.

Statement of Work means a document signed by both Parties which covers a category or categories of services to be provided by Calvert Technologies and which provides details of the work including the scope of work to be undertaken, the deliverables (if any) to be provided, a project plan or other program for the delivery of the services (where relevant), the fees payable, payment terms and the responsibilities of each party.



Schedule means a document signed by both Parties which covers a category or categories of Services or Products to be provided by Calvert Technologies.

1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation
- (b) a reference to 'person' includes individuals, firms, companies, associations (incorporated or not incorporated), corporations, governments, government and statutory bodies and other entities;
- (c) references to this Agreement and any deed, agreement or instrument are deemed to include references to this Agreement and any schedules or annexure to it or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (d) references to any party to this Agreement include its successors or permitted assigns;
- (e) words denoting any gender include all genders;
- (f) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision, and ordinances, by-laws, regulations, and other statutory instruments issued under that legislation, section, or provision;
- (g) the words 'including', 'includes', 'for example' and words to a similar effect are not words of limitation;
- (h) no rule of construction applies to the disadvantage of a party on the basis that the party puts forward this Agreement or any part of it;
- (i) whenever a party is required to indemnify the other, any indemnity will extend to the officers, employees, and agents of the party to be indemnified;
- (j) an obligation of a party to do any act or thing may be satisfied by that party procuring another person to do that act or thing;
- (k) the word 'consent' includes approval or agreement; and
- (l) an obligation of a party not to do any act or thing is to be construed to include an obligation of that party:
 - (i) not to permit that act or thing to be done; and
 - (ii) to use its best endeavours to prevent that act or thing being done by another person.

2 INTRODUCTION

2.1 Accepting the Agreement

By giving or continuing to give Calvert Technologies instructions after you receive this Agreement you will be deemed to have accepted the terms of this Agreement and each Schedule relating to the Services or Product to be provided by Calvert Technologies.

2.2 Term

This Agreement begins on the Commencement Date and continues until the later of:

- (a) 2 years from the Commencement Date; and
- (b) the expiry or termination of all Schedules and Statements of Work forming part of this Agreement.

2.3 Statements of Work & Schedules

- (a) A Statement of Work or Schedule will be prepared for each category or combination of Services and will be binding and form part of this Agreement.
- (b) If there is any inconsistency between this Agreement and a Statement of Work or Schedule, the Statement of Work or Schedule takes priority to the extent of the inconsistency.

3 DUTIES AND RESPONSIBILITIES

3.1 Specifications.

Customer shall define the Specifications, Deliverables, and Schedules[, with input from Developer].

3.2 Development.

Developer shall design, develop, and implement the Software in accordance with the Specifications, Deliverables, and Schedule.

3.3 Training.

- (a) Training Scope.

Developer shall provide Customer with an agreed number of hours of training OR such training as may reasonably be requested by Customer, on the use of the Software.

- (b) Training Dates and Locations.

The training will be conducted on such dates and locations as the parties may agree.

3.4 Maintenance.

Developer shall perform remedial and preventive maintenance for the Software after its acceptance so that the Software continues to perform in accordance with the technical design. Customer and Developer shall negotiate the terms and price of such maintenance services, but Developer shall not charge Customer more than 20% of the initial development cost per year for the first two years of maintenance services after acceptance of the Software.

Customer shall have the right to terminate such maintenance services at any time upon thirty (30) days written notice to Developer.



Developer shall have the right to terminate such maintenance services upon thirty (30) days written notice to Customer if Customer is in material breach of the maintenance agreement between Customer and Developer and remains in material breach for such thirty (30) days.

4 DELIVERY AND ACCEPTANCE

4.1 Acceptance Period.

Customer will have Sixty (60) days following the date of [delivery OR installation] to assess and test the Software.

4.2 Completion.

If Developer[, in the sole opinion of Customer,] delivers the Software in accordance with the Specifications, Deliverables, or Schedule, then Developer shall be deemed to have completed its delivery obligations.

4.3 Rejection.

If Developer[, in the sole opinion of Customer,] fails to deliver the Software in accordance with the Specifications, Deliverables, or Schedule, then:

- (a) Notification. Customer shall detail in writing its grounds for rejection; and
- (b) Rectification. Developer shall [promptly OR use its best efforts to] correct the Software and upon delivery of such correction, the process of acceptance, completion, and rejection shall restart.
- (c) Continued Failure. If the **DEVELOPER'S CORRECTIONS**[, in the sole opinion of Customer,] fails to deliver the Software in accordance with the Specifications, Deliverables, or Schedule, then Customer may elect to:
 - (i) terminate the agreement, or
 - (ii) adjust the Specifications, Deliverables, or Schedule.

5 CHANGES

5.1 Change Orders.

Customer may request changes to the Specifications, Deliverables, or Schedules.

5.2 Additional Time or Expense.

If the proposed change will, in the reasonable opinion of Developer, require a delay in delivery of the Software or would result in additional expense, then:

- (a) Customer and Developer shall confer; and
- (b) Customer may elect to either:
 - (i) withdraw its proposed change, or
 - (ii) require Developer to deliver the Software with the proposed change, subject to the delay and/or additional expense.



If Developer cannot or chooses not to accept the change order, then Customer may elect to terminate the agreement.

6 PAYMENT FOR SERVICES

6.1 Payment of the Fees

- (a) The Customer must pay the Fees to Calvert Technologies in accordance with the Payment Terms.
- (b) Calvert Technologies will issue Tax Invoices for the Fees. All Tax Invoices are due within 7 days of the date of receipt of the Tax Invoice.
- (c) If a genuine dispute arises regarding the amount of a Fee, the Customer may suspend payment of the disputed amount pending resolution of the dispute but the Customer must pay all other amounts in accordance with the Payment Terms.

6.2 Outstanding Fees

- (a) If the Customer fails to pay all outstanding amounts by the due date for payment, interest will accrue on the outstanding balance at the rate of 10% per annum calculated on a daily basis from the date that the outstanding balance was due and payable to the date it is paid in full.
- (b) The Customer will be liable for all debt collection fees and charges incurred by Calvert Technologies, including but not limited to mercantile/debt collection agent's fees and solicitor's costs and disbursements.

6.3 Expenses

Subject to Customer's prior approval, Customer will reimburse Developer for all reasonable expenses incurred by Developer during the development of the Software.

6.4 Suspension of Services

If the Customer fails to pay any amount due under this Agreement within 45 days of such fees becoming due, or otherwise materially breaches its obligations under this Agreement, Calvert Technologies may, at its discretion by notice to Customer and without limiting any other remedies it may have, suspend the provision of any or all of the Services until such time as such material breach or failure has been remedied.

6.5 No set off

The Customer agrees that it cannot withhold any amount payable to Calvert Technologies under this Agreement even if the Customer considers it has a claim against Calvert Technologies in relation to the Agreement.

7 OWNERSHIP OF SOFTWARE

Developer agrees that the development of the Software is "work for hire" and that the Software shall be the sole property of Customer, unless alternative arrangements have been entered in to. Developer assigns to Customer its entire right, title, and interest in anything created or developed by Developer for Customer under this Agreement. This assignment is conditioned upon full payment of the compensation due Developer under this Agreement.

8 REPRESENTATIONS

8.1 No Infringement.

Developer represents and warrants that the Software will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person.

8.2 No Third-Party Property.

Developer represents and warrants that it will not use any trade secrets, or confidential or proprietary information owned by any third party in developing the Software.

8.3 No Obligation.

Developer represents and warrants that neither Developer nor any other company or individual performing services pursuant to this Agreement is under any obligation to assign or give any work done under this Agreement to any third party.

8.4 No Open Source.

Developer warrants that the Software does not contain any Open Source Software, unless such Open Source Software is a required component of the Software.

9 WARRANTIES

9.1 Performance.

Developer warrants that for a period of Sixty (60) days, the Software will operate substantially according to the Specifications.

9.2 Repair or Replace.

Developer will repair or replace the System during such warranty period as soon as possible after Customer informs Developer of any breach of this warranty.

9.3 Exclusions.

This warranty excludes any claims based on defects in the Software caused by Customer, other parties beyond the control of Developer, or the hardware.

9.4 No Other Warranties.

There are no express or implied warranties, including the implied warranties of merchantability and fitness for a particular purpose, respecting this Agreement, the Software or Services.

10 ACKNOWLEDGEMENT-RELATIONSHIP OF THE PARTIES

10.1 Independent Contractor.

Developer is an independent contractor and is not an employee or agent of Customer.

10.2 No Partnership.

Nothing in this Agreement creates a partnership or joint venture between the parties.