

Software Product Development Agreement

**Konnect Applications Pty Ltd
Trading as Moonward
ACN 625 785 613**

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	3
2.	ENGAGEMENT	8
3.	DESIGN, DEVELOP AND DELIVER SERVICES	9
4.	SUPPORT AND MAINTENANCE SERVICES	10
5.	CHANGES AND ALTERATIONS	11
6.	CLIENT MATERIALS	12
7.	WARRANTIES	12
8.	INVOICING AND PAYMENT	13
9.	INTELLECTUAL PROPERTY	14
10.	LIABILITY AND INDEMNITY	15
11.	CONFIDENTIALITY AND PRIVACY	16
12.	FORCE MAJEURE	17
13.	TERMINATION	18
14.	CONSEQUENCES OF TERMINATION	18
15.	DISPUTE RESOLUTION	19
16.	RELATIONSHIP OF THE PARTIES	19
17.	NON-SOLICITATION	19
18.	PUBLICITY	20
19.	NOTICES	20
20.	GENERAL PROVISIONS	21

Software Product Services Agreement

By using Konnect Applications PTY LTD trading as Moonward the Client agrees to be bound by the following terms and conditions.

Date ► _____/_____/_____

Between the parties

Konnect Applications Pty Ltd ACN 625 785 613
ABN 12 625 785 613
of Level 13, 144 Edward Street, Brisbane City, QLD, 4000
(Moonward, contractor, we, us, our)

[Client - Full Entity Name] [Client - ACN]
[Client - ABN]
of [Client - Postal Address]
(Option: Client Nickname or Client], you, your, yours)

- Background**
- A. Moonward operates a development company which designs, develops, builds and supports Software Products.
 - B. [Client] wishes to develop a Software Product.
 - C. [Client] engages us to design, develop and deliver the "[Software Product]" and provide other agreed services on the terms and conditions set out in this Agreement.
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Operative part

1. Definitions and interpretation

1.1 Definitions

In this Agreement, the following definitions apply unless the context otherwise requires:

Term	Meaning
Business Day	means a day that is not Saturday or Sunday or a public holiday, special holiday or bank holiday in Queensland, Australia;
Claim	means any allegation, debt, cause of action, claim, proceeding, suit or demand;
Copyright	means: <ul style="list-style-type: none">(a) any copyright under the Copyright Act 1968 (Cth);(b) any copyright under the law of a country other than Australia; and rights in the nature of or analogous to the rights in (a) and (b) under the Law of Australia or any other country (including future copyright and rights in the nature of or analogous to copyright);

Confidential & Private

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Client Background IP	means Intellectual Property Rights owned by or licensed to [Client] (including know-how and technical information) which exists before the date of this Agreement but does not include Contractor Background IP or Project IP;
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Client Material	any documents, reports, data, information, software, tools and methodologies, fonts computer files, designs, graphics, logos, artwork, know-how, templates, methodology, equipment or other material of any sort and in any form provided to us by you (or at your direction) in connection with the Services;
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Confidential Information	<p>means any information whether in writing or otherwise relating (in any way) to:</p> <ul style="list-style-type: none">(a) in relation to a party, that party's business, operations or affairs (including if that party is a corporation, the business, operations or affairs of a Related Entity of that party), including any information relating to pricing, products, customers (including customer lists), trade secrets, know-how, concepts, techniques, processes, formulae, models, employees, contractors, subcontractors, sub-licensees, agents, technology, application software, computer software, agreements and arrangements with third parties, strategies, marketing, promotional, corporate or business structure and technical information and data;(b) the Project Plan, Development Proposal, the Services and its underlying software or any Intellectual Property Rights; or(c) the terms of this agreement or, the fees payable under this agreement, including any such information in the party's power, possession or control concerning or belonging to any third party; but <p>does not include information that:</p> <ul style="list-style-type: none">(d) is, or becomes part of, the public domain otherwise than by breach of this Agreement by either party;(e) is lawfully obtained by either party from another person without any restriction as to use and disclosure; or(f) was in either party's possession prior to disclosure to it by the other party;
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Commencement Date	means the earlier of the date that the last party to this Agreement executes the Agreement or the date on which the Services commence in accordance with this Agreement;
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Design, Develop and Deliver Services	means the services set out in the [Software Product] Development Proposal;
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Development Proposal	means the document titled "[Software Product] Development Proposal", a copy of which is signed by [Client] before the commencement of this agreement.
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Developer Background IP	means Intellectual Property Rights owned by or licensed to us (including know-how and technical information) which exists before the date of this Agreement, including those of its Personnel, but does not include the Clients Background IP or Project IP;
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Force Majeure Event	means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:
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- (a) riot, war, invasion, an act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, an insurrection of military or usurped power, pandemic, epidemic or a declared health emergency, requisition or compulsory acquisition by any governmental or competent authority;
 - (b) cyber security breach, data breach or intrusion, significant electrical failure, electrical fusion or motor burnout;
 - (c) earthquakes, flood, lighting or other physical natural disaster but excluding weather conditions regardless of severity; and
 - (d) strikes at a national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers but excluding any industrial dispute which is specific to the performance of this Agreement;
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GST means any goods and services tax under the GST Act or a tax of a like or analogous nature that is imposed, assessed or levied in relation to any supply made of goods, services or any other thing under this Agreement, including the production investment or gross proceeds due for payment;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any associated legislation and regulations;

Ineffective means void, illegal or unenforceable;

Insolvency Event means, in relation to a party:

- (a) a receiver, receiver and manager, trustee, administrator, another controller (as defined in the Corporations Law) or similar official is appointed over any of the assets or undertaking of the other party;
- (b) the party suspends payment of debts generally;
- (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Law;
- (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed, or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up, or dissolution of the other party or a resolution is passed, or any steps are taken to pass a resolution for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;

Intellectual Property Rights means any and all intellectual and industrial protection rights throughout the world including rights in respect of or in connection with:

- (a) any Confidential Information;
- (b) Copyright and Moral Rights;
- (c) inventions (including patents);
- (d) trade marks or service marks; and
- (e) designs or circuit layouts;
- (f) domain names; and
- (g) other rights of a similar nature,

whether or not now existing, and whether or not registered or registrable, and includes any applications for registration or right to apply for the registration and includes all renewals and extensions;

Law	means Commonwealth and State legislation including regulations, by-laws and other subordinate legislation, any requirements, codes, standards and guidelines of the Commonwealth, the State and local governments and authorities with which you and we are legally required to comply, and all other laws, common law and equity;
Liability	means any liability, whether under agreement, tort (including negligence), statute, restitution or otherwise;
Loss	means any damage, loss, cost, Liability or expense (including legal costs and expenses on an indemnity basis);
[Software Product]	means the Software Product and software which is the subject of the Development Proposal and includes any associated and ancillary items and technology;
Moral Rights	means rights of integrity, rights of attribution and rights of an analogous nature which may now exist and which may exist in the future in respect of the licensed property under the <i>Copyright Act 1968</i> (Cth) or under the law of a country other than Australia;
Parties	means you and us;
Party	means you or us;
Personal Information	has the same meaning as given to it in the <i>Privacy Act 1988</i> (Cth);
Personnel	means a party's officers, employees, agents or sub-contractors and officers, employees or agents of those sub-contractors;
Privacy Law	means any Law which relates to privacy, including the <i>Privacy Act 1988</i> (Cth), the <i>Spam Act 2006</i> (Cth), and the <i>Do Not Call Register Act 2006</i> (Cth);
Project IP	means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of or in connection with the performance of the Services in accordance with this Agreement but does not include the Developer Background IP or the Client Background IP;
Project Milestones	means a stage in the Project Plan at which specified parts of the development of the [Software Product] will have been completed, specified results achieved, or specified conclusions reached as required by the Project Plan;
Project Plan	means the milestones or phases set out in the Development Proposal;
Representative	in respect of a party means the authorised representative nominated by that party in respect of the Services or any other person appointed by the relevant party and notified to the other party from time to time;

Services	means the services to be provided by us under this Agreement which include: <ul style="list-style-type: none">(a) Design, Develop and Deliver Services;(b) Support and Maintenance Services; and(c) additional services to be provided as agreed by the Parties;
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Service Fee	means the payments and/or the manner of payment as described in the Development Proposal;
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Subsequent Development Proposal	means: <ul style="list-style-type: none">(a) the milestones and phases; and(b) the specifications, in the form or in a form similar to the original Development Proposal;
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Support and Maintenance Services	means the support and maintenance services as agreed between the Parties in accordance with clause 4.1, including but not limited to: <ul style="list-style-type: none">(a) updating the content of the [Software Product] as directed by you;(b) maintaining and updating [Software Product] links;(c) ensuring the [Software Product] remains compatible with its software, third party platforms and generally used to access the internet or devices;(d) ensuring the document remains current; and(e) providing training and instruction in the use of the [Software Product] upon request and(f) advising you from time to time as to the extent to which the [Software Product], or any content included on the [Software Product] has or may become incompatible with software generally used to access the internet or the device;
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Term	means the period set out in clause 2.1; and
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Third-Party Rights	means Intellectual Property Rights owned by or licensed to third parties.
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1.2 Interpretation

In this Agreement, unless the context indicates otherwise:

- (a) headings and underlines are for convenience only and do not affect the interpretation of this Agreement;
- (b) explanatory comments do not form part of this Agreement and are not legally binding;
- (c) a reference to this Agreement includes any annexure, exhibit or Schedule to this Agreement;
- (d) a provision of this Agreement will not be interpreted against a party just because that party prepared the provision;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (f) a reference to a statute includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;

- (h) a reference to a party to this or any other Agreement includes that party's successor and permitted assign;
- (i) a reference to an agreement other than this Agreement includes an undertaking, Agreement or legally enforceable arrangement or understanding whether or not in writing;
- (j) a reference to a clause, a Schedule, or an annexure is a reference to a clause, a Schedule or an annexure to this Agreement;
- (k) a reference to a clause includes a reference to a sub-clause;
- (l) a reference to a person or words denoting a person includes a company, statutory corporation, partnership, joint venture, association, board, government or semi-government agency or authority and that person's successors and legal personal representative; and
- (m) the words "includes" and "including" or words of similar effect are not words of limitation.

2. Engagement

2.1 Commencement Date

This Agreement commences on the Commencement Date and ends upon the earliest of:

- (a) it being terminated in accordance with clause 12; or
- (b) at the completion of the Design, Develop and Deliver Services provided the Parties have not agreed for us to provide to you the following additional services:
 - (i) Support and Maintenance Services in accordance with clause 4; or
 - (ii) any alteration to the specifications of the [Software Product], the Services or the Project Plan in accordance with clause 5.

2.2 Our Engagement

- (a) You engage us to:
 - (i) develop the [Software Product] substantially in accordance with the Development Proposal; and
 - (ii) to carry out the Services,

on the terms and conditions set out in this Agreement.

- (b) In consideration of the payment of the Service Fees and all additional fees, charges and outlays, we agree to the engagement outline in clause 2.2(a) on the terms and conditions set out in this Agreement.

2.3 Standard of the Services

- (a) We will provide the Services:
 - (i) in accordance with this Agreement and the Development Proposal;

- (ii) exercising reasonable skill, care and attention in accordance with this Agreement; and
 - (iii) in accordance with all feedback, requests or directions made by in accordance with this Agreement.
- (b) Nothing in this Agreement will affect our right and discretion to exercise our own professional judgment in providing the Services. Without limitation, we may exercise our absolute discretion in providing the Services to the extent that the exercise of such discretion is not substantially inconsistent with the Development Proposal.

2.4 Your Obligations

You will be responsible for procuring all necessary authorisations, licences and consents required to enable us to provide the Services.

2.5 Third Party Services

- (a) We may require you to register an account and access third party services, products, platforms and/or websites to enable the provision of our Services to you (**Third Party Services**). You understand and accept that your account, access and use of the Third Party Services will be subject to a separate agreement between you and the third-party service provider, which may include, without limitation, terms and conditions of use and privacy policies. You agree that we are not responsible or liable in any way for the Third Party Services.
- (b) By using, and continuing to use, the Third Party Services, you:
 - (i) understand and agree to abide by and comply with all terms and conditions, privacy policies and other policies of the third-party service provider;
 - (ii) are responsible for keeping all account information and passwords confidential and secure and agree to back-up and maintain your information in an accurate and up to date form;
 - (iii) are responsible for all activity and use of any accounts registered by you, including those registered by your officers, employees and contractors;
 - (iv) understand and agree that your access or use of the Third Party Services is provided on a temporary basis and is subject to the licence or subscription agreement between us and the third-party service provider;
 - (v) understand and agree that any decision or action made by either the third-party service provider or us in relation to the Third Party Services is at our discretion and we reserve the right to discontinue or suspend your access to the Third Party Services at any time, for any reason and without providing any explanation or notice; and
 - (vi) authorise us to access the Third Party Services designated by you, on your behalf, to retrieve information requested by you in order to facilitate the provision of Services by us. For that sole purpose only, you hereby appoint us as your agent, with full power of substitution and resubstitution, to access the Third Party Services, servers or documents, retrieve information, and use your information, all as described in this clause, with the full authority to do and perform anything necessary to be done in connection with such activities, as fully to all intents and purposes as you may or could do in person.

- (c) You acknowledge and agree that when we access and retrieve information from the Third Party Services, we are acting as your agent. You agree that third-party account providers are entitled to rely on the foregoing authorisation and agency granted by you solely for the purpose set out in this clause.
- (d) Any personal information collected by us through the Third Party Services, or otherwise collected by or on behalf of us, will be dealt with in accordance with our privacy policy.

3. Design, Develop and Deliver Services

3.1 Our Obligations

Without limiting the generality of the obligation set out in clause 2.2(b), in the performance of the Design, Develop and Deliver Services, we will:

- (a) have regard and be guided by the guiding principles set out in the Project Overview Section in the Development Proposal;
- (b) ensure that the [Software Product] meets the functional, design, technical and infrastructure requirements set out in the "Project Breakdown & Strategy" section in the Development Proposal, excluding any third-party platform providers and their requirements;
- (c) deliver the deliverables set out in the "Project Breakdown & Strategy" section in the Development Proposal; and
- (d) subject to clause 3.4, use reasonable endeavours to comply with the timeframe requirements set out in the "Proposed Project Timeframes" section in the Development Proposal.

3.2 Project Milestones

The Parties agree that:

- (a) you will approve the completion of any Project Milestone required to be met by us as set out in the Development Proposal, provided we have met all of the requirements for that milestone; and
- (b) any deviation from the obligations set out in clause 3.1, or any change or alteration to any sections of the Development Proposal referred to in clause 3.1, must be agreed by both Parties. Our standard hourly rates plus GST will apply for any additional services performed as a result of the deviation, change or alteration to the Development Proposal.

3.3 Deemed acceptance

If after the completion of a Project Milestone, you do not provide your approval and no dispute exists, then it will be deemed that you are satisfied and approve the completion of the Project Milestone notwithstanding your failure to give notice of acceptance.

3.4 Foreseen Delays

- (a) If we become aware of a potential or actual delay in completing any Project Milestone, then we will notify you in writing within thirty (30) Business Day of the potential or actual cause of the delay and the estimated date of completion.

- (b) Where we provide notice in respect of a delay under clause 3.4 above, you must grant us an extension of time for completion of any Project Milestone.
- (c) If a potential or actual delay occurs, we will not be considered to be in breach of this Agreement. We will not be liable to you or any third party for any Loss, compensation, or damages.

3.5 Personnel

- (a) We will ensure that our Personnel perform the work required to be performed by, or on behalf of, us under this Agreement. We reserve the right to assign our Personnel to perform the Services in our sole discretion.
- (b) We may appoint sub-contractors to undertake some or all of our obligations under this Agreement as required or determined necessary by us in our absolute discretion.

4. Support and Maintenance Services

4.1 Ongoing Maintenance

- (a) We will, subsequent to any deemed completion of development of the Design, Develop and Deliver Services, continue to offer the Support and Maintenance Services as agreed by you and set out in the Development Proposal.
- (b) If you wish to obtain the Support and Maintenance Services, then you engage us for those services for a minimum of [4] weeks on these terms and conditions and for the price as set out in the Development Proposal or as otherwise stated by us.

4.2 Training and Documentation

Upon request, and in our absolute discretion, we may provide all necessary training and documentation to enable you to properly operate, function efficiently, effectively use and commercially exploit the [Software Product]. We will charge you an hourly rate amount plus GST for any additional or extra work under this clause.

5. Changes and Alterations

5.1 Process

If you require any changes during the Term of this Agreement to the scope and nature of the Services to be provided, the Development Proposal or any elements of the [Software Product] which we advise require additional time, material or resources to be provided by us, such changes will occur as follows:

- (a) you will notify us of the changes required in writing, signed by your authorised representative;
- (b) following notification, we will provide you with written notice of:
 - (i) the changes required to the Development Proposal;

- (ii) the additional Services required by such changes; and
 - (iii) the additional fees, charges and timeframes required to undertake such additional Services; and
- (c) if you agree to:
 - (i) the changes to the Development Proposal;
 - (ii) the additional Services; and
 - (iii) the additional fees, charges and timeframes,

this Agreement (including the Development Proposal) will be considered varied from the date you notify us in writing that of your acceptance, to include such changes as set out in the notice provided by us pursuant to this clause.

5.2 Subsequent Development Proposal

- (a) The Parties may agree, subsequent to the development of the [Software Product] envisaged by this Agreement, to further develop the [Software Product] and/or undertake related activities or improvements.
- (b) If both Parties agree to such subsequent development or activities, they will agree on a Subsequent Development Proposal. The Subsequent Development Proposal and its specifications will be treated as though it was the Development Proposal, with all rights and obligations accrued under this Agreement applying to it in that manner.

6. Client Materials

6.1 Use of Client Materials

- (a) You must deliver or make available to us the Client Materials as set out in the Development Proposal or as required by us during the Term of this Agreement. All Client Material will be provided in a form suitable for incorporation into the [Software Product] without any modification by us.
- (b) You grant to us a non-exclusive, perpetual, irrevocable, and royalty-free licence to use, reproduce, sub-license, disclose, modify and adapt the Client Material for the purposes of providing the Services.
- (c) If you do not:
 - (i) supply the Client Materials as required by us; or
 - (ii) provide feedback, an approval, or make payment of a milestone payment in accordance with this Agreement when the performance of the milestone has been achieved,

then the milestone timeframe requirements imposed on us under this Agreement will be automatically extended, and our engagement will be suspended until you perform and complete any of those requirements.

7. Warranties

7.1 General warranties

Each party warrants that:

- (a) the execution and delivery of this Agreement has been properly authorised;
- (b) it has the full corporate power to execute, deliver and perform its obligations under this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy; and
- (d) it is authorised by all necessary government and other agencies and authorities to perform its obligations under this Agreement and will continue to be authorised to perform this Agreement.

7.2 Our warranties

- (a) In addition to the warranties provided in clause 7.1, we warrant that:
 - (i) the [Software Product] will perform substantially in accordance with the Development Proposal;
 - (ii) the [Software Product] will not contain any app virus (or any similar or other damaging components); and
 - (iii) we will correct any errors or defects relating directly to code contained within the [Software Product] app and reported to us during the period of seven (7) days from the date of conclusion of the Design, Develop and Deliver Services.
- (b) We do not represent, warrant, or guarantee that the [Software Product] will comply with any and all requirements set by Apple Inc or a related body corporate for inclusion on and download from the App Store, Google LLC or a related body corporate for inclusion on and download from Google Play or any other third-party platform provider.
- (c) We do not represent, warrant, or guarantee that the [Software Product], as at the date of the conclusion of the Design, Develop and Deliver Services, will be usable on any Apple, Android, Google, Microsoft or other third-party platform and mobile device.

7.3 Your warranties

In addition to the warranties provided in clause 7.1, you warrant that:

- (a) the Client Material is not obscene, offensive, upsetting or defamatory; and
- (b) the Client Material does not comprise and cannot be used for any purpose or activity of an illegal or fraudulent.

8. Invoicing and Payment

- (a) You will pay:
 - (i) any deposit or part-payment for the Services as set out in the Development Proposal or as required by us;
 - (ii) the Service Fee as set out in the Development Proposal or as further agreed by us in writing; and
 - (iii) any additional fees, charges and outlays incurred under this Agreement.
- (b) On each of the Service Fee Payment Dates, we will submit an invoice to you for an amount of the relevant payment that will include the Service Fee and any additional or applicable fees, charges or outlays.
- (c) You agree to pay us the amounts set out in the invoice within seven (7) days of the date of invoice.
- (d) You may dispute the whole or any part of the amount claimed in an invoice submitted by us pursuant to this Agreement, in which case:
 - (i) you will pay the undisputed portion on the due date;
 - (ii) you may withhold payment of the disputed portion pending resolution of the dispute;
 - (iii) if the resolution of the dispute determines that you owe us an amount, then you will pay us that amount upon resolution of the dispute together with interest at the rate of 10% per month calculated daily; and
 - (iv) you accept that the Services will be suspended pending the resolution of the dispute.
- (e) You acknowledge that any alteration or amendment to the timing of a Project Plan may necessitate an amendment of the timing for subsequent Project Milestones. You further acknowledge that an alteration or amendment of the Project Proposal may, in addition to necessitating an amendment to the timing of the Project Plan, entitle us to charge you additional amounts.
- (f) The Parties agree that any and all amounts and other consideration referred to in this Agreement are inclusive/exclusive of all taxes, including any GST or value-added tax. If GST is imposed on any supply made under this Agreement, the party making the supply

will collect GST from the recipient in addition to any consideration due and payable for the supply.

- (g) In respect of any taxable supply, you must promptly pay to us an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Service Fees, subject to your receipt of a valid tax invoice.

9. Intellectual property

9.1 Ownership of Intellectual Property

- (a) You retain the Intellectual Property Rights in the Client Background IP and the Client's Material.
- (b) We retain the Intellectual Property Rights in the Developer Background IP.
- (c) The Parties acknowledge that ownership of any existing and future Intellectual Property Rights in the Project IP and any intellectual property that is designed, developed, created, formed or delivered by us during or in connection with the performance of the Services will automatically vest with You, on their creation, as proprietary property.
- (d) You warrant that all Confidential Information, preparation materials, documentation, names, copywriting, trade marks or logos, Copyrights, information and other things provided to us as to perform the Services do not infringe any Intellectual Property Rights of any third party.

9.2 Third-Party Rights

- (a) We will, insofar as is practicable, avoid incorporating elements carrying Third Party Rights in the [Software Product]. In the event that we do, we will use our best endeavours to procure an assignment to you of all Third Party Rights embodied in the [Software Product] and will notify you if any such assignment cannot be obtained.
- (b) In relation to any Third Party Rights that are not assigned to you, you agreed that we are under no obligation to ensure that the use, reproduction and commercial exploitation of the [Software Product] will not infringe any such rights and that no fees, royalties or other payments are payable in respect of such Third Party Rights as a result of any such use, reproduction and commercial exploitation.
- (c) You accept and agree that we will not refund or repay to you any monies paid to us for the Services, whether partly or wholly completed, should you infringe any Intellectual Property Rights in the Project IP or the Clients Background IP that results in the cessation of our work, the cancellation of the Services or the [Software Product], the inability to market or distribute the [Software Product] or as otherwise determined by Law.

9.3 Acknowledgment

The [Software Product] including its source code does not have to bear attribution of the elements developed and created by us, alongside all other attributions normally due in relation to the Services.

9.4 Source Code

We will deliver the final source code, artwork, digital files and documentation generated by us during the provision of the Services to you provided that:

- (a) You have paid the total Service Fee, plus all additional fees charges and outlays, and there are no outstanding monies are owed to us; and
- (b) You have accepted and approved the final version of the [Software Product] in written and have executed any supplied documentation in respect of the release of the final source code.

10. Liability and Indemnity

10.1 Indemnity

You will at all times indemnify and keep us indemnified and our officers, employees, contractors, subcontractors and agents (in this clause 10.1 collectively referred to as **Those Indemnified**) from and against any Loss or Liability incurred by any of Those Indemnified (including legal fees and disbursements on an indemnity basis) arising from any Claim by any person against any of Those Indemnified where such Loss or Liability arose out of, in connection with, resulting from, or in respect of:

- (a) any breach of this Agreement by you; or
- (b) any of the warranties given by you under clause 7.2 proving to have been false, misleading or inaccurate when made; or
- (c) any negligent, fraudulent, unlawful or wrongful act or omission by you; or
- (d) any infringement or alleged infringement of the rights, including the Intellectual Property Rights, of any person occurring by use of the [Software Product];
- (e) any allegations that the Client Material or any use of it by us in accordance with this Agreement infringes any Intellectual Property Right or any other right of any person.

10.2 Exclusion of liability

- (a) To the full extent permitted by Law, we exclude:
 - (i) all Liability in respect of any Loss or damage, loss of data, interruption of business or any consequential or incidental damages;
 - (ii) all Liability in respect of any Loss or damage suffered or incurred or which may arise directly or indirectly in respect of any infringement by any person of our Intellectual Property Rights or any other right of ours in or in relation to the [Software Product];
 - (iii) all Liability in respect of any Loss or damage caused directly or indirectly by any act or omission of any person who may access the [Software Product], whether or not you have knowledge or notice of, authorised or otherwise permitted such infringement or other act or omission; and

- (iv) all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
- (b) In respect of any Claim between the Parties under or in connection with this Agreement, the Parties agree that to the maximum extent permitted by Law, the operation of any laws in the Commonwealth and the states and territories of Australia with respect to proportionate liability, are excluded and have no application or effect.
- (c) Our total aggregate Liability for all Claims relating to this Agreement and Liability arising out of any particular breach of this Agreement for damages regardless of the cause of action, whether contract, tort (including negligence) or breach of statute or any other legal or equitable obligation is limited to the Service Fees payable under this Agreement.
- (d) Our Liability for any Claim arising out of or relating to this Agreement will be reduced to the extent to which you have contributed to the Loss or damage arising from the Claim.
- (e) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, guarantees, conditions or obligations. If such legislation applies, to the extent possible, we limit our liability in respect of any claim to, at our option:
 - (i) in the case of goods:
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of the goods;
 - C. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - D. the payment of having the goods repaired, and
 - (ii) in the case of services:
 - (iii) the supply of the services again; or
 - (iv) the payment of the cost of having the services supplied again.

10.3 Notification of claims

You will notify us in writing as soon as practicable and in any event within two (2) Business Days of any Claim or demand made, or action, suit or proceeding suspected, threatened or brought, against you arising from any breach of the warranties or from the infringement or alleged infringement of Third Party Rights or Intellectual Property Rights in respect of the [Software Product], the Clients Background IP or the Project IP.

11. Confidentiality and Privacy

11.1 Confidential Information

- (a) Each party must not, either during the Term of this Agreement or at any time thereafter, without the prior written consent of the other party, use or disclose the other party's

Confidential Information unless expressly permitted by this Agreement and except to the extent necessary to comply with its obligations under this Agreement.

- (b) A party may:
 - (i) use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and
 - (ii) disclose the Confidential Information to its Personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (c) Nothing in this Agreement prohibits use or disclosure of information which:
 - (i) is in the public domain otherwise than as a result of a breach of this clause 11;
 - (ii) is received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this clause 11;
 - (iii) is required to be disclosed by Law or any other government or regulatory body, authority, agency or stock exchange having authority over a party;
 - (iv) is disclosed by you as a part of a bona fide potential sale of its assets, shares in you or shares of any company of which you are a wholly-owned subsidiary; or
 - (v) is for the purposes of providing legal, accounting or financial advice.

11.2 Return of materials

Each party (**Receiving Party**) who receives Confidential Information of the other party (**Disclosing Party**) must promptly return, or at the Disclosing Party's option destroy, all Confidential Information made of the Disclosing Party in the Receiving Party's possession or control, on the earlier of our request or on termination of this Agreement for any reason.

11.3 Privacy

- (a) We will comply with all applicable Australian Privacy Laws in respect of all Personal Information collected, used, disclosed and otherwise handled by us or in connection with this Agreement.
- (b) Without limiting clause 11.3(a), we will collect, use, disclose and otherwise deal with Personal Information collected by or on behalf of us in the course of or in connection with this Agreement only for the purpose of performing this Agreement.

19.8 Data Migration

Upon request, we may provide reasonable assistance to you, and any third party nominated by you in relation to the migration of any data related to the [Software Product] and the costs and outlays relating to such assistance will be at your own cost and payable to us.

12. Force Majeure

12.1 Force Majeure Event Process

If, as a result of a Force Majeure Event, a party becomes unable, wholly or in part, to perform any of its obligations under this Agreement or is delayed in performing those obligations:

- (a) the affected party must immediately give notice to the other party setting out full details of the Force Majeure Event and the reasons for the Force Majeure Event preventing that party from or delaying that party from, performing the affected obligations under this Agreement;
- (b) the affected obligations identified in the notice referred to in clause 10.1 (a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Force Majeure Event; and
- (c) the affected party must use its best endeavours to overcome or remove the effects of the Force Majeure Event as quickly as possible.

12.2 Recommencement of Services

- (a) Upon completion of the Force Majeure Event, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- (b) We are not liable for an inability to perform, or for any delay in performing, any of our obligations under this Agreement if that inability or delay is caused by a Force Majeure Event.
- (c) You have no entitlements, and we have no Liability for:
 - (i) any costs, losses, expenses, damages or any payment during a Force Majeure Event; and
 - (ii) any delay costs in any way incurred by you during a Force Majeure Event.
- (d) A Force Majeure Event does not relieve a party from Liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

13. Termination

13.1 Termination for breach

A party may immediately terminate this Agreement by written notice to the other if any of the following events has occurred in respect of the other party:

- (a) a material breach of this Agreement which is not remediable or if capable of remedy, where the other party fails to remedy the breach within thirty (30) days of written notice; and

- (b) an Insolvency Event occurs, other than an internal reconstruction with notice to the other party.

13.2 Termination for convenience

This Agreement may be terminated at any time on seven (7) days notice by us.

14. Consequences of termination

14.1 Consequences of termination

If this Agreement is terminated or expires for any reason, then, in addition, and without prejudice to any other rights or remedies available:

- (a) we will stop work (except to the extent specified in the notice from you);
- (b) you must immediately pay all outstanding monies owing to us, including Service Fees and other fees, charges or outlays payable prior to or following termination; and
- (c) we will:
 - (i) take such action as necessary, for the transfer, protection and preservation of your property and such actions will be at your cost and expense;
 - (ii) deliver to you or a third party nominated by you, all documentation which has been prepared by us or on our behalf for delivery to you by us under this Agreement at the date of termination or expiry, regardless whether the documentation is complete; and
 - (iii) provide such assistance as may be necessary to enable the [Software Product] to be developed or the Services to be provided by you, or another qualified developer or by a third party nominated by you, including the delivery of the [Software Product] to a level where another developer is able to utilise the work in continuing the development of the [Software Product] and provision of the Services.

14.2 Costs of termination

The costs incurred by us in providing the assistance or other actions required under clause 14.1(c)(iii) will be at your expense and payable to us.

14.3 Deposits

If you terminate this Agreement before its expiration, you agree and accept that any deposits or part-payments made for the Services under this Agreement, including for Services yet to be performed by us, are forfeited to us and not refundable. We reserve the right to charge an administration fee of \$500 if you terminate this Agreement before its expiration.

14.4 Liability for Services

You are, and will remain, liable for payment to us of any Services performed and delivered up to and including the date of termination, regardless of whether those Services are partially or wholly completed, or not realised until after the date of termination and whether or not an invoice has been rendered.

14.5 Accrued rights

The termination of this Agreement is without prejudice to any rights which have accrued to a party before the date of termination.

15. Dispute Resolution

15.1 Dispute Resolution Process

You agree that any dispute arising from or related to this Agreement will be heard solely by a court of competent jurisdiction in the State of Queensland. Specifically, and in order to keep proceeding, you agree that, in the event that a mutually agreed resolution is achieved, the unsuccessful party, if desired, initiates proceedings through the Queensland Civil and Administrative Tribunal (QCAT) as the first step in any legal proceeding.

16. Relationship of the Parties

16.1 Engagement as an Independent Contractor

The Parties acknowledge that we are an independent contractor and not an employee or agent of you.

16.2 No partnership

This Agreement does not create any partnership, joint venture or agency relationship between the Parties.

17. Non-Solicitation

17.1 Non-Solicitation

You agree not to employ or otherwise engage any of our Personnel, contractors or agents except via us.

Unless otherwise expressly agreed in writing (which consent to be granted or withheld at our sole and absolute discretion), this obligation continues for each Personnel, contractor or agent for:

- (a) Twelve (12) months after the end of your engagement with us or, if that is not enforceable;
- (b) Nine (9) months after the end of your engagement with us or, if that is not enforceable;
- (c) Six (6) months after the end of your engagement with us or, if that is not enforceable;
- (d) Three (3) months after the end of your engagement with us.

17.2 Reasons and Costs

- (a) You agree that:

- i. given our presence in the Australian market and the online nature of digital technology, it is reasonable that this restraint is Australia wide. If that territory is deemed to be unenforceable, then the territory of the restraint is the State of Queensland;
 - ii. given the nature of our business, our innovative knowledge and approach and our investment in quality Personnel, contractors or agents, this is a reasonable and fair measure to protect our interests;
 - iii. given the time and cost we invest in recruiting, training and developing our Personnel, contractors or agents, we deserve to be compensated for this time and cost on an indemnity basis; and
 - iv. the damages payable under clause 17.2 below are a genuine pre-contract estimate of the loss and damage we will suffer if You breach Your obligations under this Agreement, and do not amount to a penalty at law, and that you will not seek to challenge the amount payable at all.
- (b) If You breach clause 17.1 then you must pay us the following amounts as damages immediately upon written demand, as a debt due and payable:
- i. an amount equal to 12 months salary or cost for the person you employ or otherwise engage at their annual salary or cost plus any superannuation payable on that amount at the time they left our employee or engagement, plus a recruiting fee of 20% of that salary or cost, or if that is not enforceable;
 - ii. an amount equal to 6 months salary or cost for the person you employ or otherwise engage at their annual salary or cost plus any superannuation payable on that amount at the time they left our employee or engagement, plus a recruiting fee of 20% of that salary or cost.

18. **Publicity**

18.1 **Announcements**

- (a) To the extent permitted by Law, you (including your Personnel) will not make any public announcement, blog, public statement, article for publication or make any representation to any media representative about:
- (i) this Agreement;
 - (ii) the performance of this Agreement by any party;
 - (iii) any matter related to this Agreement; or
 - (iv) any other party to this Agreement,

whether in electronic form or otherwise, without our prior written consent.

- (b) Notwithstanding clause 18.1(a), you grant us a perpetual and irrevocable right to use your name and logo together with details of the Services in any form or medium as part of our promotional materials without any need to obtain any further or prior approval from you.

19. Notices

19.1 Legibility

A notice under this Agreement will be in legible writing and in English addressed to the party concerned at that party's address.

19.2 Address

For the purpose of the notice under clause 19.1, a party's address is the address specified at the commencement of this Agreement or as notified to each other party.

19.3 How notices may be served

- (a) A notice may be served by:
 - (i) giving it to the other party personally;
 - (ii) posting it by registered post; or
 - (iii) emailing it.
- (b) Unless otherwise specified, notices will be deemed to have been delivered when receipt is acknowledged by the recipient or seventy-two (72) hours from the time the notice is sent (whichever is sooner).

19.4 When a notice is sent by post

Notices sent to the recipient's postal address must be sent by registered or certified mail, return receipt requested. If the notice is posted by registered or certified mail, it is deemed to be received by the receiving party two (2) Business Days after posting.

19.5 When a notice is sent by email

In relation to email, a receipt is deemed to be acknowledged by the recipient by a delivery receipt notification generated by the recipient's email system after sending of the email containing the notice or to which the notice is attached. Emailing notices will constitute sufficient and effective delivery when delivered to the recipient's email account, whether or not the specific electronic communication is accessed or read.

20. General Provisions

20.1 Enforceability

- (a) If a provision of this Agreement is invalid or unenforceable, it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- (b) Each party will do all things and execute all further documents necessary to give full effect to this Agreement and the events contemplated by it.

20.2 Waivers & Variations

- (a) This Agreement may be amended only by a document signed by all Parties.
- (b) A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- (c) A waiver by one (1) party does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party. A party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.

20.3 Assignment

We may assign its rights under this Agreement without your prior written consent. You must not assign or other dealings in any other way with any of its rights or obligations under this Agreement without our prior written consent.

20.4 Entire Agreement

This Agreement sets out the entire Agreement between the Parties, and it replaces all previous communications, representations, inducements, undertakings, agreements and arrangements between the Parties in respect of its subject matter and this Agreement may not be modified except by a written agreement signed by each party. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.

20.5 Inconsistencies

The terms of this Agreement prevail in the event of any inconsistency between this Agreement and its Schedule or Annexures.

20.6 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one (1) instrument and may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument. This Agreement may also be executed by an exchange of facsimile or electronic transmissions of signed counterparts of this Agreement.

20.7 Facsimile or electronic transmission

If the Parties elect to form this Agreement by exchanging facsimile or electronic transmissions of signed counterparts of it, then:

- (a) the Agreement will be deemed to have come into effect at the time and on the date when the counterpart which is last executed is received in fully intelligible form by the party to whom it has been transmitted (assuming that a signed counterpart has been previously executed and previously transmitted and received by each non-signing party prior to the time at which the last executed counterpart is transmitted and received by the party to whom it is addressed); and
- (b) as soon as is reasonably practicable after this Agreement comes into effect by way of facsimile or electronic transmission, the Parties must exchange signed original counterparts of it.

- (c) Any non-compliance with paragraph (b) will not affect the validity, enforceability or binding effect of this Agreement.

20.8 Failure to comply

A party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation

20.9 Survival

The terms of this Agreement listed in clauses 6.1(b) (Client Materials), 7 (Warranties), 8(f) and 8(g) (GST), 9 (Intellectual Property), 10 (Liability and Indemnity), 11 (Confidentiality), 14 (Consequences of Termination), 15 (Dispute Resolution), 17 (Non-Solicitation), 18 (Publicity), 19 (Notices), 20 (General) and any other obligations that, by their nature, survive termination survive its termination to the extent permitted by Law.

20.10 Legal advice

Each party acknowledges that it has received legal advice or has had the opportunity of obtaining independent legal advice in relation to this Agreement.

20.11 Costs, stamp duty and other taxes

Each party will bear its own costs in relation to the negotiation, preparation, execution, delivery and completion of this Agreement and any other related documentation. You will pay all stamp duty, taxes and other governmental charges payable or assessed on this Agreement and any other related documentation.

20.12 Governing law and jurisdiction

This Agreement is governed by the laws of Queensland, Australia. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland, Australia.

Signing Page

Executed as an agreement in Queensland.

Signed for and on behalf of Konnect Application Pty Ltd trading as Moonward, ACN 625 785 613 by its authorised representative/s or officers/ in accordance with Section 127 (1) of the *Corporations Act 2001* (Cth):

A. Owen

Signature of Director

Signed for and on behalf of [Client - Full Entity Name] by its authorised representative/s or officer/s in accordance with Section 127 (1) of the *Corporations Act 2001* (Cth):

Signature of Director

Date: _____