

# Annexure 3 – “Terms and Conditions”

We at Mom's Friendly Development Company (“MFDC”) pride ourselves on being as transparent as possible to ensure there are no misunderstandings within our relationships with our Customers.

If there's anything you're unsure about in our Terms and Conditions herein, please do not hesitate to contact us.

## 1. Nature of Your Agreement

- 1.1. Your agreement with Us is subject to these Terms and Conditions. You are deemed to have accepted these Terms and Conditions if you commission, retain or otherwise engage Us pursuant to You being provided a copy of these Terms and Conditions, including but not limited to Us providing You with an estimate, quotation, Project Agreement or Service Agreement (to which these Terms and Conditions are attached or refer), if you pay an invoice (to which these Terms and Conditions are attached or refer), or if you engage us by way of retainer, request, accept or otherwise receive goods or services from Us at any time after receiving notice of these Terms and Conditions.
- 1.2. The Terms and Conditions may only be amended by a document executed by Us. The Terms and Conditions prevail to the extent of any inconsistency with the terms and conditions of any document issued by You (whether before or after the date of any agreement between You and Us). No document issued by you imposes terms and conditions in addition to, or inconsistent with, those contained herein or contained in any agreement prepared by Us, unless expressly agreed to by Us pursuant to a separate document subsequently issued by Us.

## 2. Service Expectation and Criteria

- 2.1. The work to be performed under the Service Agreement is specified within the Scope of Works. Upon acceptance of the Scope of Works by both parties, MFDC agrees to perform those services set forth in the Scope of Works.
- 2.2. Additional Statements of Work may be entered into in writing and signed by both parties, during the term of this Agreement. Such additional Statements of Work shall be incorporated by reference to this Agreement.
- 2.3. Extension of the period of performance of this Agreement may be agreed to in writing and signed by both parties during the term of this Agreement. Such extension shall be issued as a Variation.
- 2.4. Any issue with respect to MFDC's performance of services must be raised by the Customer within seven (7) days of the completion of those services after which time the services performed by MFDC for that period are deemed to have been performed to an acceptable standard and the Customer is precluded from raising dispute as to payment of the applicable fee for that period, whether Retainer Fee or Additional Services Fee.

## 3. Fees payable to MFDC

### 3.1. General Fees

- a) Unless agreed otherwise in writing, We shall charge You on an hourly basis with Our Hourly Rate from the date of our Agreement through to the completion of the Work plus any disbursements and out-of-pocket expenses incurred by us in carrying out that work.
- b) Our hourly rates are set out in Appendix A "Hourly Charge Rates" herein and different hourly rates will apply based upon the resource needed to provide those services to You, including but not limited to project management, technical resources (business / solution analyst / architect, programmer, tester), design services (graphic, print, web, creative), information technology services (technical specification, hardware / software configuration), consulting and strategic services.
- c) Time is charged on an hourly basis or part thereof.
- d) If We (the supplier) make a supply to You (the recipient) or another party under or in connection with this Agreement, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying or providing that consideration You must:
  - i) pay to Us an amount equal to any GST for which We are liable on that supply, without deduction or set-off of any other amount; and
  - ii) make that payment as and when the consideration or part of it must be paid or provided, except that You need not pay unless You have received a tax invoice (or an adjustment note) for that supply.
- e) In providing services to the Customer, MFDC shall be acting as an independent contractor and not as an employee or agent of the Customer. MFDC shall have no authority, express or implied to commit or obligate the Customer in any manner whatsoever.
- f) Subject to 3.1(d), MFDC shall be responsible for the payment of all taxes applicable to any compensation paid to MFDC and the Customer shall not be required to withhold or pay federal, state or local income, social security, unemployment and workers

compensation taxes related to the work performed under the Agreement.

### 3.2. Project Work

- a) Fees payable to Us for Project Work will be paid to Us in accordance with these Terms and Conditions, the Scope of Works and subject to the Scope Documentation as agreed between the Customer and Us for Our services.

### 3.3. Project Estimates

- a) We will endeavour to provide you with an estimate of fees to be charged for particular stages of work. An estimate is not a quote. Any estimate given by Us will be valid for 14 days and lapse if not accepted by you within this time.
- b) Any estimate provided by Us for any stage of work may, unless expressly stated to the contrary, include an estimate of any reasonably foreseeable disbursements and expenses.

### 3.4. Service Agreement Work

- a) With respect to a Service Agreement entered into with Us, the Retainer Fee must be paid weekly in advance pursuant to these Terms and Conditions herein and in accordance with the Service Agreement. Any services provided by Us in excess of the hourly allowance provided in exchange for payment of the Retainer Fee must be paid by You within 14 days of the date of invoice issued by Us.
- b) The Customer shall pay MFDC for Additional Services as defined in the Scope of Works. These services include those services which MFDC provide in excess of the Scope of Works and are in addition to the value of the Retainer Fee (as defined in the Scope of Works) for any given weekly period.
- c) The Retainer Fee shall be paid by the Customer weekly in advance of the services to be performed. As payment of the Retainer Fee is fixed MFDC is not required but may at its option issue an invoice for payment. The Customer may request a weekly report for the services performed in accordance with this Agreement.
- d) If payment of the Retainer Fee is not made within 14 days of the work have been carried out, all services shall be suspended until payment has been received by MFDC.

For any period that services are suspended for reason of non-payment the Customer agrees that it is obliged to pay the Retainer Fee for that period and shall have no right to claim damages, or compensation amount resulting from the suspension for non-payment.

- e) In circumstances that the value of the Retainer Fee for any given weekly period has been or will be exceeded, the Customer shall pay MFDC the fee for Additional Services for that weekly period ("**Additional Services Fee**") where:
- i) MFDC has performed services to the value of the Retainer Fee for that weekly period (whether by MFDC having performed the hourly allowance for each service / resource as set out in the Scope of Works or by having provided other services at the hourly charge rate or a combination of the two for the weekly period); and
  - ii) The Customer and MFDC have agreed in writing that the Additional Services will be performed by MFDC; in which case:
    - MFDC shall issue the Customer an invoice for payment for the cost of the Additional Services for that weekly period; and
    - The cost of the Additional Services shall be calculated by reference to the hours worked (or any part thereof) by MFDC at the hourly charge rate for the resource / service as set out in Appendix A.
- f) MFDC may amend its rates, including but not limited to its rates for Retainer Hours specified in the Scope of Works and Hourly Charge Rates, by not less than 45 days written notice to You. If you do not wish to proceed in light of the amended rates, you may terminate this agreement by providing written notice under clause 7.3.
- g) Where the Scope of Work includes any discount on retainer fees, MFDC may amend the discount by 45 days written notice to You. If you do not wish to proceed in light of the amended discount, you may terminate this agreement by written notice under clause 7.3.
- h) If you breach any of your obligations under this Agreement, MFDC may immediately suspend or revoke any discount on the charge rate specified in the Scope of Works

at its own discretion by written notice to you.

### **3.5. Disbursements and Out-of-Pocket Expenses**

- a) All disbursements and out-of-pocket expenses reasonably incurred by Us in connection with services provided by Us are added to the fees payable by MFDC and must be paid by You.
- b) These expenses may include, without limitation, expenses incurred by Us for travel, copywriting, illustration, photographic and other services, models, film, processing, printing, materials, equipment, couriers, catering, telephone calls, facsimile transmissions, on-line time, postage and sundries.
- c) The Customer shall reimburse MFDC for only such travel and other expenses as have been authorised in advance in writing.
- d) Any other amounts due hereunder, such as out of Pocket disbursements and expenses incurred by MFDC, shall be invoiced together with the Retainer Fee or separately and the Customer shall pay those amounts within fourteen (14) days from the date of the invoice being issued.

### **3.6. Surcharge & Additional Charges**

- a) Additional charges may apply in excess of any amount payable by You in accordance with an estimate, quote, invoice, Service Agreement or Project Agreement in circumstances where You request Us to provide goods and / or services on an urgent basis, outside of standard business hours (Monday to Friday, 9 am to 5 pm), on a Saturday, Sunday or Public Holiday or otherwise within a shorter time frame than previously agreed by Us.

### **3.7. Payment Terms**

- a) With respect to Project Work, unless previously agreed otherwise in writing, You must pay Us 40% of the total amount of the Project Estimate or agreed Deposit amount (where specified in the Project Estimate) prior to Us commencing any work. All remaining costs are payable to Us in accordance with the payment schedule specified in the Scope Documentation and,

- in any other case, within 14 days from the date of the invoice being issued to You.
- b) Without limiting the forgoing, irrespective of the basis on which the services are rendered, payment terms are strictly 14 days from the date of invoice being issued. We are entitled to make written demand for any amounts outstanding and interest is payable by You from the date that any such payment was due and payable (or in any other case from the date of our written demand) on any amounts outstanding calculated by reference to the greater of:
- i) the rate of pre-judgement interest to be applied by the Registrar when giving judgement under rule 283 of the Uniform Civil Procedure Rules 1999 (Qld) and set by Practice Direction pursuant to section 58 of the Civil Proceedings Act 2011 (Qld); or
  - ii) the rate of interest that is four (4) percent higher than the Reserve Bank rate (cash rate).

## 4. Hourly Allowances

### 4.1. Project Agreement Work

With respect to Project Work,

- a) where an hourly allowance has been provided, We estimate that the relevant project stage or deliverable will be concluded within that hourly allowance specified. The Customer is not entitled to any credit, discount or reduction where that stage or deliverable is achieved or not achieved within the hourly allowance specified;
- b) If we agree in writing to cap our allowance of hours, MFDC agrees to not charge you for any additional hours incurred in excess of that hourly allowance for that given stage or deliverable;
- c) Where no hourly allowance cap applies for a specified deliverable or stage and the hourly allowance is to be exceeded, MFDC shall notify you as soon as practicable. MFDC reserves its rights to issue a revised cost estimate for the work necessary to complete that deliverable or stage to be approved by You before work shall proceed.

### 4.2. Service Agreement Work

With respect to work provided subject to a Service Agreement:

- a) MFDC shall provide services up to the number of hours specified as the Hourly Allowance in the Service Agreement in exchange for payment of the Retainer Fee;
- b) In the event that the MFDC performs those services set forth in the Scope of Works or as otherwise directed by the Customer and agreed by MFDC within the Hourly Allowance for that period, MFDC shall be entitled to full payment of the Retainer Fee for that period without reduction; and
- c) Where MFDC completes the services specified in the Scope of Works for a given week in less time than provided for in the Hourly Allowance, MFDC may elect, at its own unfettered discretion, to roll over any unused portion of the Hourly Allowance by increasing the Hourly Allowance for the following week by the amount of the unused portion of the Hourly Allowance. If MFDC does not elect to roll over the unused portion of the Hourly Allowance, You will not be entitled to any compensation or reduction in the Retainer Fee payable.

## 5. Debt Recovery

- 5.1. You will reimburse Us any costs and expenses reasonably incurred by us in seeking to recover outstanding amounts due to Us, including but not limited to debt collection fees and legal fees and expenses.
- 5.2. If fees payable to MFDC are not paid by You in accordance with these Terms and Conditions, MFDC will engage the services of a debt recovery professional and all fees and charges with regards to debt recovery and the debt recovery professional and / or agency will be at the expense of the customer and may, at the option of MFDC, be added to the total fees and charges outstanding or form the basis of a separate amount to be recovered as a liquidated debt.
- 5.3. Debt recovery fees and charges include time and service incurred by MFDC, any professional or legal fees and expenses incurred by MFDC (whether paid by MFDC or not) arising from and in relation to the

recovery or attempted recovery of amounts outstanding.

## 6. Improvements and Inventions

- 6.1. MFDC shall promptly notify and fully disclose to the Customer, in writing, the existence and nature of any and all ideas, designs, apparatus, practices, processes, improvements and inventions ("Inventions"), which MFDC has conceived or first actually reduced to practice during the term of this Agreement or within six (6) months after termination of this Agreement, if such Inventions relate to a product or process upon which MFDC worked during the term of this Agreement.

## 7. Termination

- 7.1. Notwithstanding any contrary provision contained elsewhere in this Agreement, this Agreement and the rights and obligations hereunder may be terminated:
  - a) by the Customer immediately if MFDC defaults in the performance of its obligations under this Agreement, including failure to provide the products or services set forth in the Scope of Works within the times specified; or
  - b) by MFDC immediately if the Customer defaults in the performance of its obligations under this Agreement; or
  - c) by MFDC if the Customer becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors; or
  - d) by MFDC if the Customer, being a corporation, comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001, or an order is made for the purpose of placing the corporation under external administration.
- 7.2. Where this Agreement is terminated under clause 7.1(a) above, MFDC shall be entitled to payment for all services provided prior to the termination of this Agreement in accordance with the hourly rates specified in Annexure A.
- 7.3. Either party may terminate this agreement by providing 30 days advance written

notice, provided that such notice cannot be provided until at least 30 days after the execution date of this agreement.

- 7.4. Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of either party under this Agreement or otherwise at law or in equity.

## 8. Your Responsibilities

- 8.1. You must do all things reasonably necessary, and supply Us in a timely fashion with all materials reasonably required by Us, in order for Us to perform the services. This may include without limitation supplying copy, photographs and other visual or audio-visual material, and if required, performing sub-editing and copywriting. Without limiting Our rights under this agreement, if We are unable to complete any services because of Your actions or omissions, or if You instruct Us to cease or postpone any work, We may still render invoices for time expended or work already performed, including any disbursements incurred or agreed to by Us or any other Third Party.
- 8.2. You warrant that you are entitled to use, and to authorise Us to use, all visual elements, written expressions, trademarks and other components and content that You provide to Us. You are solely responsible for obtaining any permission associated with the use of such materials. You indemnify Us from any loss or damage of any kind (including legal fees and expenses on an indemnity basis) which We may suffer as a result of any breach or representation made by You, including without limitation the warranties given by You.
- 8.3. You must notify Us of any errors at the earliest opportunity and no later than any relevant Sign-Off stage, including any Sign-Off with any third party. We accept no responsibility for errors that You detect after any relevant Sign-Off stage or project closure date, nor for any loss or damage of any kind (including legal fees and expenses on any basis) which You or any third party may suffer or incur as a result, arising from or incidental to any error, defect or fault not being detected, or as a result of changes requested or required by You after

any relevant Sign-Off stage or project closure date.

- 8.4. You must provide Us with a key-line credit or production credit on all artwork whenever it is practicable to do so. The credit must be in the form provided by Us.

## 9. Intellectual Property

- 9.1. You agree that We may use any of the MFDC Material in a portfolio of work, and for that purpose, may link or otherwise refer to your website and / or content (whether an online or offline instance).
- 9.2. Generally, the format, the purpose and the coverage area will be specified in writing at the time of when We are engaged, commissioned or otherwise retained by You to deliver the goods and services resulting from the production of the MFDC Material. In the event that terms of use are not specified in writing, We reserve the right to withhold any grant of licence of use until those terms are expressed in writing and signed by both parties.
- 9.3. The Customer acknowledges that all Intellectual Property created by MFDC is owned by 1337 IP Pty Ltd, and MFDC has the exclusive right to licence and sell such Intellectual Property as it deems fit.
- 9.4. Nothing in this agreement assigns any Intellectual Property from 1337 IP Pty Ltd to the Customer.

### 9.5. MFDC Software (Licence Basis)

Where the software described in the Scope of Works has been comprised of services rendered by MFDC on a Licence Basis, it is provided in accordance with the below terms and conditions:

- a) All Intellectual Property rights held within MFDC Software are owned by 1337 IP Pty Ltd and will never pass to the Customer;
- b) MFDC has the exclusive right to sub-licence the MFDC Software, including but is not limited to all software source code developed by MFDC, its subsidiaries, acquisitions and partners;
- c) The source code shall include all programs, functions, features and configurations held within the software and / or any part of the application stack or software suite;
- d) Unless otherwise agreed, the Customer hereby expressly acknowledges and agrees that 1337 IP Pty Ltd shall own all

right, title and interest to the software including all enhancements, new functionality, configurations, integration and changes made to the software.

- e) Upon full payment of all MFDC invoices, the Customer will obtain a limited non-exclusive licence to use any and all MFDC software and associated Intellectual Property on the following basis:
  - i) Limited use of the MFDC Material in only the final format in which the content is provided to You; and
  - ii) Limited purpose of use of the MFDC Material for the purpose expressly specified in the Scope of Works or otherwise as agreed by the parties in writing; and
  - iii) Limited area of use of the MFDC Material within that coverage area, market and/or territory expressly specified in the Scope of Works or otherwise as agreed by the parties in writing.
- f) Without limiting the foregoing or Our rights in the circumstances, if the MFDC Material is either modified in format, used for any other purpose or in a coverage area, market or territory not previously agreed by Us in writing, You must pay Us such further licence fees as advised in writing.
- g) The Customer may not assign its rights under this Agreement to any third party without the consent of the MFDC.

### 9.6. MFDC Software (Buy-Out Basis)

- a) Where the software identified in the Scope of Works has been comprised of services rendered by MFDC on a Buy-Out Basis by the Customer it shall be conditional on the below terms and conditions:
  - i) Subject to any rights of any Intellectual Property owned by third parties, upon receipt of Your payment to Us of all fees and any outstanding amounts due to Us in full, all technical or business information, in whatever medium or format, including but not limited to, data, specifications, drawings, records, reports, proposals, software and related documentation, inventions, concepts, research or other information (herein collectively referred to as "Information"), originated or prepared by or for the Customer (either

- solely or jointly with others) in contemplation of, or in the course of, or as a result of, Services performed hereunder, shall be promptly furnished and delivered to the Customer;
- ii) All such Information (other than MFDC Material or Component previously copyrighted or patented by MFDC or any third party) shall become the exclusive property of the Customer. For the avoidance of doubt this specifically excludes any and all Intellectual Property owned by MFDC, 1337 IP Pty Ltd and/or Matt Carter, now or in the future, via the Massachusetts Institute of Technology (MIT) License;
  - iii) MFDC will assign all rights in the works produced under this Agreement to the Customer (subject to clause 8.6(a)(ii) of this Agreement) without the need for further documentation, subject clause 9 (Third Party Rights) of this Agreement and the rights and interests of any third party in the works; and
  - iv) If such information includes material previously copyrighted or patented by MFDC and not originally prepared hereunder, MFDC hereby grants to the Customer a limited license to use the MFDC material only in the final format in which the content is provided to the Customer for the purpose and limited area of use expressly specified in writing and the Customer is hereby expressly prohibited to use the MFDC Material for sale, disclose or sublicense, assignment or for any purpose than expressly permitted in writing by MFDC.
- b) No interest or entitlement to use the MFDC Material will pass to You until all payments due to Us under this Agreement have been received by Us as cleared funds.
  - c) Should this Agreement be terminated and an outstanding amount is due and payable by You to MFDC, any and all licences shall be immediately cancelled until such time as full and final payment has been made.

## 10. Third Party Rights

- 10.1. You acknowledge that in providing services to You (irrespective of the basis on which the services are rendered), We may either use licensed intellectual property via the Massachusetts Institute of Technology

(MIT) license, or sub-contract with third parties, including but not limited to Third Party Software, photographers, copywriters, models, technicians and other talent. The rights granted to You by Us in the MFDC Material are subject to all bona fide third-party rights attaching to the MFDC Material or any part thereof, and to the various copyright and intellectual property rights comprising in or depicted by the MFDC Material.

- 10.2. The individual Components which in their entirety comprise of the MFDC Material may include, but are not limited to models, characters, paragraphs, artistic works, copyright, sound recordings, technical plans, technical data, software, hardware and cinematograph films. Any agreement between You and Us does not entitle You to exploit or otherwise deal with the components separately from the MFDC material as whole. Unless agreed to the contrary in writing by Us, all responsibility for obtaining any necessary third-party consents in respect of the MFDC Material or the Components shall lie with You.
- 10.3. Any software, information or material provided by third parties that is incorporated into or used in conjunction with the software described in the Scope of Works ("**Third Party Software**") shall be governed by the terms and conditions of the third party with respect to that Third Party Software, including license agreement or other right(s) accompanying or otherwise applicable to such Third Party Software or material. The Customer agrees to abide by those terms and conditions of the third party and shall hold MFDC harmless for any breach, damage or liability arising as a result of any breach of any third party rights or terms and conditions relating to Third Party information, material and Software.
- 10.4. Any right granted to You by Us in the MFDC Material or arising from the services rendered by this Agreement are subject to all bona fide third-party rights attaching to the MFDC Material, and to the various copyright and intellectual property rights comprising in or depicted by the MFDC Material.
- 10.5. Without limiting the foregoing, you warrant to Us that, in respect of any Components supplied by You (whether or not incorporated into the MFDC Material), You have obtained all necessary consents for

Us to use and exploit those Components for the purpose as agreed between You and MFDC, and that such use by Us will not infringe the rights of any third parties anywhere in the world.

- 10.6. You indemnify Us from any loss or damage of any kind (including legal fees and expenses on an indemnity basis) which We may incur or suffer as a result of Your failure (alleged or proven) to obtain necessary consents or arising as a result of any representation made by you in relation to your right or entitlement to use any alleged infringing material or Component or alleged or actual breach by You of these Terms and Conditions, including without limitation the warranties given by you.

## 11. Approval Procedure

- 11.1. Where appropriate, we will provide a list of project stages or Milestones to be completed by Us. On completion of certain project stages, we may supply approval documents to be signed off by You (or Your pre-agreed signatory) or request that You participate (such as provide Customer feedback to Us or undertake Customer user acceptance testing) within a defined period.
- 11.2. You agree that upon the closure of any Customer participation period (whether for Customer feedback or testing or as otherwise defined in the Scope Documentation), and unless You notify us otherwise within such period, Your approval shall be deemed as being given as though sign-off were provided by You for work to be continued to be undertaken by Us in accordance with the project schedule and milestones as set out in the Scope Documentation.
- 11.3. You agree that any requests for changes after sign-off may render previous estimates for completion of the work inaccurate, and without limiting Our rights, We may charge additional fees or incur additional disbursements as a result in accordance with our variation and escalation process.

## 12. Variation and Escalation Process

- 12.1. In the event that Your requirements change during the course of our engagement after an approval document has been signed-off by You or Your pre-agreed signatory, including Scope Documentation, this will be considered to be a Variation where it is not within the Scope of Works.
- 12.2. A Variation may arise as a result of either a Customer request, a technical dependency or constraint known to the Customer of which MFDC had not been advised prior to its engagement or an assumption provided by the Customer to MFDC proving to be incorrect which results in change not otherwise accommodated within the project scope.
- 12.3. Examples of a Variation are:
- You make a change to the business requirements or acceptance criteria;
  - You request a change to the functionality (or by adding further functionality), to the look and feel, source or target system, performance, deployment platform, accessibility or compatibility;
  - You make a request for work which is not within the Scope of Works to be carried out by Us;
  - You request We carry out work outside of an agreed sequence or in advance to the agreed schedule; and
  - An hourly allowance estimate with no agreed cap for any project stage or milestone is exceeded.
- 12.4. Any Variation will need to be assessed, understood and costed by Us and such variation documented (including a revised Scope Documentation and / or design where necessary) by Us for approval by You (or Your pre-agreed signatory), which you must approve before such Variation will comprised part of the Scope of Works to be carried out by Us.
- 12.5. If the project schedule changes for any reason whatsoever affecting the projected delivery, payment dates and / or payment amounts (as set out in the Scope Documentation) the Customer agrees that MFDC is entitled to:
- revise the delivery milestone & payment schedule (as specified in the Scope Documentations, subject to any Variations) for Customer approval;



- b) cease to carry out any further or subsequent work (at MFDC's own unfettered discretion) until the revised delivery milestone & payment schedule has been agreed;
  - c) issue an invoice for payment by the Customer in accordance with these Terms and Conditions and any subsequent agreement entered into with Us for any work carried out by MFDC including any work with respect to a project stage, Milestone or Milestone Payment as set out in the Scope Documentation.
- 12.6. In the first instance, the first point of contact will be the MFDC Project Manager and the person nominated as Your signatory. Any dispute or matter which cannot be resolved to either Our or Your satisfaction in the first instance and at this level then the matter will be escalated and submitted for informal dispute resolution between the MFDC Director and, at the Customer's option, the Customer's business owner, chief executive officer or director.

## 13. Confidentiality

- 13.1. In the course of Us rendering services to You, each party may have access to information which is of substantial value to the other party and which is proprietary and confidential to the other party. This proprietary and confidential information may include but is not limited to any written technical data, devices, patents, processes, business methods, techniques, compilations, equipment, designs, sales and price lists, customer lists and customer contacts, products and services required or preferred by customers, business plans and projections, marketing plans and other business and financial information relating to the other party's business.
- 13.2. Each party undertakes not at any time to divulge any such proprietary and confidential information of the other party to any other person, body corporate, associated entity or third party without the other party's prior written consent except in the performance of either party's obligations in accordance with these Terms and Conditions and / or separate agreement. This undertaking applies for

the period We provide goods or services to You and continues to apply beyond the date the goods or services has been provided.

- 13.3. Nothing in this clause shall deprive either party of the right to use or disclose any information which was within the public domain and lawfully available to the public at the time it was obtained by that party or which thereafter becomes lawfully available to the public through no act or omission of that party.
- 13.4. On expiry or termination of this agreement, or any subsequent agreement between the parties, each party will, on request from the other party, deliver to the other party all documents, records or other materials in possession of the other party, in any and all media, which relate in any way to the business or affairs of the other party, including such documents, records and other materials which contain confidential or proprietary information of a kind referred to in this clause.
- 13.5. This clause 13 will survive the termination of this Agreement.

## 14. Exclusion or Limitation of Liability

- 14.1. MFDC is not liable to You or any other person for any direct, indirect, consequential or incidental loss, damages or expenses of any kind arising from or relating to the supply of goods or services to You by Us or the use of the MDfC software (whether used for its intended purpose or not).
- 14.2. This Agreement will not be read or applied so as to purport to exclude, restrict or modify all or any of the provisions of the Competition and Consumer Act 2010 (Cth) ("the Act") (including the Australian Consumer Law as contained in schedule 2 of the Act) or the Sale of Goods Act 1896 (Qld) or any other law which cannot be excluded, restricted or modified.
- 14.3. Without prejudice to any of the foregoing, if We incur a liability to You under such legislation, or in the event of breach of these Terms and Conditions or those terms as express by any subsequent agreement between the parties, Our liability is limited to such of the following as We may nominate in Our discretion:

- a) the replacement of the goods concerned or the supply of equivalent goods or services;
- b) the repair of those goods;
- c) the payment of the cost of replacing the goods or the supply of equivalent services;
- d) the payment of the cost of having the goods repaired; or
- e) the depreciated value of fees paid in respect of those goods.

15.5. MFDC agrees that services shall be performed hereunder in a professional and workmanlike manner and that the service MFDC provides to the Customer shall meet the requirements set forth in the Scope of Works.

## 15. Warranty of Service

- 15.1. Unless expressly stated otherwise and agreed in writing by the parties, this is not a support agreement.
- 15.2. Although MFDC will provide the Customer with every assistance with its obligations with respect to services rendered by MFDC in relation to the software described in the Scope of Works, MFDC does not warrant to provide production support of any instance of the software nor can it respond to any fix of production instance of the software.
- 15.3. MFDC agrees that services shall be performed hereunder in a professional and workmanlike manner and that the service MFDC provides to the Customer shall meet the requirements set forth in the Scope of Works.
- 15.4. Although MFDC will provide the Customer with every assistance with its obligations with respect to services rendered by MFDC in relation to the software described in the Scope of Works, MFDC does not warrant to provide production support of any instance of the software nor can it respond to any fix of production instance of the software.

## 16. MFDC Service Agreement Work Methodology

- 16.1. MFDC uses an agile project management methodology for service agreement work and will not deviate from this approach unless agreed by the Customer and MFDC. The MFDC Project Methodology for each project stage are as follows:
- 16.2. The project progresses in sprints with MFDC working on assigned tasks and reporting back to the client at regular and appropriate intervals.
- 16.3. The completion of hourly retainer hours within the weekly sprints is a milestone and deemed to have satisfied MFDC obligations in providing its services and the clients requirements.
- 16.4. The completion of hourly retainer hours with the weekly sprint is confirmation of MFDC fulfilling its services within a reasonable timeframe.

## 17. MFDC Project Work Methodology

- 17.1. MFDC uses a stage gate project management methodology for project work and will not deviate from this approach unless agreed by the Customer and MFDC. The MFDC Project Methodology for each project stage are as follows:

Project Work Methodology Stage		Details
1	Project Estimate	The estimated price and breakdown of service from MFDC and any relevant 3rd party contractors.
2	Scope and Technical Research and Analysis	Expanding upon the Estimate, the formal scoping of the Project provides a firm quote and identifies: <ul style="list-style-type: none"> <li>+ Customer Requirements (functional and non-functional) against which the solution will be developed and tested;</li> <li>+ Deliverables;</li> <li>+ Time Frame (and any hourly allowances) for work to be carried out.</li> </ul>

<b>3</b>	Design – Prototype (Technical Design & Wireframes)	Non-functional view of the system (generally a wireframe / high level design) is developed to meet requirements. This stage provides the Customer with a design overview of the technical design and an opportunity to provide feedback into the design process.
<b>4</b>	<b>a)</b> System Build (Functional Prototype)	The build stage is where the core of the system and database are constructed. A functional working prototype of the system (i.e. around 60% complete) to provide the Customer with an opportunity to “use” the system and “see” how the system meets the requirements.
	<b>b)</b> System Build (UAT Release)	This build stage is where all feedback is incorporated into the system and it is declared ready for User Acceptance Testing (UAT). The system is at least 80% complete. Any requested variation will require further scoping, costing and approval before inclusion into the completed build.
	<b>c)</b> System Integration (if required)	This is not a standard stage and is used if required. This is where the system has a requirement to integrate with 3rd party products and/or solutions.
<b>5</b>	Customer User Acceptance Testing	The Customer performs tests against the User Acceptance Testing criteria. MFDC addresses any defects to ensure system meets requirements and releases further UAT builds for re-testing by the Customer.  This stage does not introduce any new functionality to the application unless agreed by approved variation.
<b>6</b>	Application Packing and Handover	MFDC will package the system ready for hosting or deployment and provide this to the customer.

## 18. General Terms

### 18.1. Jurisdiction

- a) This Agreement shall be construed and enforced in accordance with the laws of the State of Queensland.
- b) Any legal action in relation to this document against any party or its property may be brought in any Court of competent jurisdiction in the State of Queensland
- c) Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any Court specified in this provision in relation to both itself and property.

### 18.2. Severability

- a) Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without

affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### 18.3. Force Majeure

- a) Neither party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that party’s reasonable control, including, but not limited to, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, strikes, and prolonged shortage of energy. In the event of such delay the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the effect of any such delay.

### 18.4. No Merger

- a) No provision of this agreement merges on completion or termination with respect to either party’s right or obligation regarding confidentiality,

intellectual property, rights to payment as set out in this Agreement and MFDC's Terms and Conditions.

- 18.5. Entire Agreement
- a) This agreement together with MFDC's Terms and Conditions as amended from time to time, inclusive of the attached Scope of Works(s), is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this agreement, inclusive of the attached Scope of Works(s), and MFDC's Terms and Conditions as amended from time to time. All representations, communications and prior agreements (save MFDC's Terms and Conditions) in relation to the subject matter are merged in and superseded by this agreement
- 18.6. Counterparts
- a) This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- 18.7. Notices
- a) A notice to or by a party under this Agreement must be in writing and signed by the party;
- b) Any notice may be served by delivery in person or by post or email to the last known address / email address of the other party, or as notified by any party in writing from time to time;
- c) A notice is affective for the purpose of this Agreement upon delivery in person to the other party, or at 4.00pm local time of the place it was sent, on the date in which it was emailed to posted to the other party otherwise 9.00am the following day.
- 18.8. Pre-contractual Negotiations
- a) This Agreement expresses and incorporates the entire agreement between the parties in relation to the subject matter and all the terms of the agreement;
- b) This Agreement supersedes and excludes any prior or collateral negotiations, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

## 19. Glossary of Terms

- 19.1. "**We**", "**Our**", "**Us**" and "**MFDC**" means 1337 Pty Ltd as trustee for Mom's Friendly Development Company Unit Trust;
- 19.2. "**You**", "**Your**" refers to the client or customer of MFDC;
- 19.3. "**Component**" means the individual components which in their entirety comprise the MDF Material, including intellectual property rights attaching to those components held by any person or third party;
- 19.4. "**Customer**" means any party or parties that enter into a contract or agreement (or are identified as a stakeholder therein) with MFDC for Our supply of services or goods to them;
- 19.5. "**Intellectual Property**" means the registered and unregistered rights in copyright material, patents, trademarks, service marks, trade names, logos, designs, layout, images, techniques, formulas, business models, methods, process, know how, source code (whether compiled, machine readable or otherwise), customer lists (including names, email addresses and CRM data and customer database), URL, domain name web site and web content and any arrangement or composition of the above;
- 19.6. "**Mandatory**" means a requirement data must be completed. This is required to be provided by the Customer in order to complete development;
- 19.7. "**MFDC Material**" means the Intellectual Property, designs, plans, artistic works, audio-visual material, trade-marks, logos, hardware, software and other material and content created or otherwise arranged or composed by Us;
- 19.8. "**Milestone**" means a set deliverable or outcome as defined in the Scope Documentation;
- 19.9. "**Milestone Payment**" means a payment to be made by You to Us upon or leading up to a Milestone or another agreed condition being met, as specified in the Scope Documentation;
- 19.10. "**Project Agreement**" means a project agreement between a customer and MFDC, being an agreement which provides for the Customer to engage MFDC to provide services necessary to deliver a specific project;

- 19.11. **“Project Methodology”** means the project stages followed by MFDC in delivery of the scope of services;
- 19.12. **“Project Work”** means the services we agree to provide under a Project Agreement;
- 19.13. **“Prototype”** means a development version of the system/application. It will not have all functionality ready but be representative of the core system capabilities;
- 19.14. **“Retainer Fee”** the amount payable as fees for services provided under a Service Agreement, as specified in the relevant Service Agreement;
- 19.15. **“Scope Documentation”** means the documents produced by MFDC in consultation with You which defines the breadth of the work to be undertaken by Us such as Milestones, Timeframes, Costs including but not limited to the MFDC Estimate and the MFDC Scoping Document;
- 19.16. **“Scope of Works”** means the scope of works to be provided by us to you under this Agreement, being the scope of works specified in the Service Agreement or Project Agreement and any associated Scope Documentation subject to any Variations agreed by the parties in accordance with these Terms and Conditions;
- 19.17. **“Service Agreement”** means a service agreement between Us and the Customer whereby We agree to provide ongoing services specified in the relevant Scope of Works up to the Hourly Allowance each week in exchange for payment of a Retainer Fee and payment of Additional Services Fee at our hourly charge rate for the resource or service provided by MFDC in excess of the value of the Retainer Fee for that period;
- 19.18. **“Sign Off”** means any defined stage gate during the course of delivery where the customer is required to sign off for decision or approval for the project to proceed to the next stage;
- 19.19. **“System Administrator”** means the user(s) responsible for the maintenance of the system as a whole. This user(s) is expected to have full administrative permissions, comprehension and access to the system, including but not limited to its web based interface, mobile interface, payment interface, business layer and database; and
- 19.20. **“Terms and Conditions”** means this document being the terms and conditions included into any agreement with respect to Our provision of goods and services to You, including these terms as amended by Us from time to time;
- 19.21. **“Variation”** means a variation to the scope of our engagement made in accordance with clause 12 of this Agreement