SOFTWARE DEVELOPMENT AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 20___.

BETWEEN: _____ ACN _____ of _____

(the "**Customer**");

AND: 1iT Pty Ltd ACN 092 074 247 of 41 Oxford Close West Leederville

(the "**Contractor**").

BACKGROUND

A.   The Customer is in the business of _____ and the Contractor is an experienced software systems developer.

B.   The Customer requires a software application to _____ and wishes to engage the Contractor.

C.   If the Contractor is to provide on-going support and/or systems maintenance, the parties will enter a separate service agreement.

D.   The Customer and the Contractor have agreed to enter this software development agreement on these terms and conditions.

THE PARTIES AGREE:

1.   TERM

1.1   This Agreement starts on the Commencement Date and continues until due completion of the Project or termination as set out in Clause 15.

2.   PROJECT SCOPE

2.1   The scope of the Project is set out in Schedule A.

2.2   The parties agree that any variations to the Project must be in writing and initialled by a representative of each party.

3.   SOFTWARE SPECIFICATION

3.1   The Software specifications are set out in Schedule A.

4. INTELLECTUAL PROPERTY RIGHTS ("IPR")

4.1 All IPR in the Software developed by the Contractor under this Agreement vest in and remain the property of the Contractor as such rights are created.

4.2 The Contractor grants the Customer an exclusive transferable perpetual, royalty-free licence to use the Software subject to the following restriction/s:

    (a) the Customer is not permitted to enter into commercial competition with the Contractor;

    (b) the Customer is not permitted to sub-license the Software.

This Clause survives the termination or expiry of this Agreement.

4.3 This Agreement does not affect the IPR in items which existed prior to the date of this Agreement and the Contractor warrants that it has the right to use, adapt, modify and reproduce any of such items in the Software.

4.4 The Contractor indemnifies and holds harmless the Customer from any third party claim or action in relation to matters in Clause 4.3. This Clause survives the termination or expiry of this Agreement.

5. CONFIDENTIALITY

5.1 The Contractor must keep any Confidential Information it becomes aware of strictly confidential and must not without the express prior written consent of the Customer use or disclose such information to any third party.

5.2 The Contractor must only use Confidential Information of which it becomes aware for the proper and legitimate purposes of carrying out the Project. In so doing the Contractor must take all reasonable steps to ensure that such Confidential Information is secure and that no third party can directly or indirectly access such Confidential Information.

5.3 Where the Contractor by act or omission places at risk any Confidential Information of the Customer or places at risk any intellectual property of the Customer or the intellectual property of any third party, then the Customer may take all reasonable steps including refusing access to its premises (without being in breach of this Agreement) and including seeking injunctive relief to protect such Confidential Information and/or such intellectual property. In the event of the Customer seeking injunctive relief, the successful party will be

entitled in addition to such relief and notwithstanding any other provision of this Agreement limiting liability to the benefit of any consequential costs order in its favour.

6. ACCEPTANCE TESTING

6.1 The Contractor undertakes to conduct the Acceptance Testing within any time frame specified in Schedule D.

6.2 Acceptance Testing will take place at a mutually convenient time so that the Customer's representative can be present.

6.3 When the Contractor has completed the Acceptance Testing, the Contractor will provide the Customer with Notice that Acceptance Testing is complete.

6.4 Within 6 weeks of receipt of the Acceptance Testing Notice, the Customer will provide:

(a) a Certificate of Acceptance; or

(b) a Notice of rejection (a "Dispute Notice") which will identify each aspect of the Software which it considers is defective and the details of the defect; or

(c) a Certificate of Acceptance in relation to those items which are not defective and a Dispute Notice in relation to those items which are defective.

6.5 Where the Customer has provided a Dispute Notice, the Contractor undertakes to promptly modify the Software at no additional cost to the Customer and undertake Acceptance Tests within 6 weeks from the date of receipt of the Dispute Notice. The provisions set out in Clauses 6.2, 6.3 and 6.4 will then apply.

6.6 If the Contractor does not receive a Certificate of Acceptance or Dispute Notice within 6 weeks, the Customer will be deemed to have Accepted the Software and the Customer will not be entitled thereafter to raise any claim or objection on this basis.

6.7 Notwithstanding Acceptance Testing, if the Software does not meet with the parameters of the Project scope, the Customer has the right to a refund from the Contractor of 10% of fees paid.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer will provide all reasonable access to its premises and computer systems during business hours as reasonably required by the Contractor.

7.2 For Acceptance Testing purposes, the Customer will provide whatever is reasonably necessary for the conduct of the tests including power access, hardware, printers, interfacing software (if any), test data (if any) and consumables such as cartridges, printer drums and paper.

8. CONTRACTOR'S WARRANTIES, REPRESENTATIONS & OBLIGATIONS

8.1 The Contractor warrants and represents that he/she/it has all the necessary skills, competencies, training and experience to develop the Software for the Customer throughout the Term and that it will continue to do so.

8.2 The Contractor warrants that the Software will not infringe the IPR of any person, including any moral rights under Part IX of the *Copyright Act* 1968 (Cth).

8.3 The Contractor warrants that the Software will be:

(a) free of defects, errors and of any virus;

(b) properly installed and Acceptance Tested; and

(c) compatible with any software itemised in Schedule A.

8.4 The Contractor has all necessary insurances and will maintain these for the duration of the Term. If requested by the Customer, the Contractor will provide acceptable proof of currency.

8.5 The Contractor will provide all reasonable training to the Customer to enable the Customer to fully utilise the Software and in any event such training will continue for a maximum of 4 weeks after the date of the Certificate of Acceptance.

8.6 On delivery of the Certificate of Acceptance or final Certificate if Clause 6.5 applies, the Contractor will give the Customer the Source Code. Failure to comply with this Clause will be a breach of this Agreement.

8.7 The Contractor acknowledges that he/she/it is not authorised to act as or represent him/her/itself to be an agent of the Customer.

9. PRIVACY

9.1 The Contractor agrees to comply with the provisions of the *Privacy Act* (1988) Cth.

10. PUBLICITY

10.1 The Customer gives the Contractor the right to issue any media statement or press release in relation to the Project.

11. FEES AND PAYMENT

11.1 The Customer will pay the Contractor the Fees as set out in Schedule B. The Fees will be paid by the Customer within 14 days of receipt of a Tax Invoice from the Contractor setting out the Fees charged as per the Milestone achieved.

11.2 The Contractor must promptly upon completion of each Milestone outlined in Schedule B render to the Customer a Tax Invoice for the Services provided. A Tax Invoice that has been posted to the Customer will be deemed received by the Customer two (2) days after posting (whether or not it is in fact received). The Contractor may also fax or email the Tax Invoice as well as posting it. In the case of faxing or emailing, the Tax Invoice will be deemed received on the date of faxing, emailing (even if posted as well).

11.3 Where there is a change in the Project during the Term, the Contractor may at its discretion vary by increasing or decreasing the Fees to reasonably reflect such changes. The Contractor must give the Customer 30 days prior Notice of any variation in the Fees. The Customer may, within that time if it does not accept that variation, terminate this Agreement by Notice to the Contractor. Such termination will take effect immediately and will not be a breach of this Agreement. From such termination the Customer will cease to be liable for any further Fees but must pay all Fees rendered and unpaid up to the date of termination. This provision will continue to be enforceable notwithstanding termination.

11.4 The fees and charges set out in Schedule B will be exclusive of GST.

12. DELAYS

12.1 Should either party cause a delay at any stage of the Project, the other party will agree to a reasonable extension having regard to the circumstances. The party causing the delay will be responsible for any reasonable additional costs incurred by the other party.

12.2 Where a party is or is likely to be affected by a Force Majeure event, that party must immediately notify the other party of the fact, such Notice to include full particulars of the event, an estimate of its likely duration, the extent to which the event affects delay on that party's obligations and the steps (if any) undertaken to rectify or minimise the delay.

12.3 Where a party has given Notice under Clause 12.2:

    (a)   that party's obligations under this Agreement are suspended to the extent they are affected by the Force Majeure event for so long as the Force Majeure event continues; and

    (b)   that party will use its best endeavours to minimise, overcome or remove the effects of the Force Majeure event as quickly as possible; and

    (c)   the other party may acquire the right to terminate as set out in Clause 15.

13.   LIMITATION OF LIABILITY

13.1 To the fullest extent permitted by law, the Contractor expressly disclaims all implied warranties and conditions including without limitation implied warranties as to merchantability, fitness for purpose of the Software and materials.

13.2 To the extent that any liability of the Contractor under the *Competition and Consumer Act 2010 (Cth)* cannot be excluded, the Contractor's liability is limited to replacing the Software and/or materials.

13.3 To the fullest extent permitted by law, the Contractor makes no representation or gives any warranty in respect of the provision of its services except that it will carry out the services competently, professionally and to the best of its ability having regard to the terms of this Agreement.

13.4 To the extent that any liability of the Contractor under the *Competition and Consumer Act 2010 (Cth)* cannot be excluded, the Contractor's liability is limited to either the supply of the services by the Contractor under these terms and conditions again or the payment of the cost of having another person provide again to the Customer similar services as the services supplied by the Contractor under these terms and conditions.

13.5 To the fullest extent permitted by law, the Contractor excludes all liability for indirect and consequential loss including without limitation the loss or corruption of the Software, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement.

14.   INDEMNITIES

14.1 Without limiting the operation of Clause 4.4, the Contractor indemnifies and holds harmless the Customer from and against any loss, liability, cost or expense that the Customer suffers

directly or indirectly because of an IPR and/or moral rights claim in the Software and/or the supporting materials. This clause survives the termination or expiry of this Agreement.

14.2   The Customer indemnifies and holds harmless the Contractor and promises to keep the Contractor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that the Customer might suffer as a result of any inaccuracy of the Software and/or the materials including any unauthorised use of the Software and/or materials by the Customer. This clause survives the termination or expiry of this Agreement.

15.   TERMINATION

15.1   Where there is a change in control (as defined in s50AA of the *Corporations Act* 2001 (Cth)) in the Contractor's company during the Term, the Customer reserves the right to terminate this Agreement.

15.2   If a Force Majeure event causing delay as set out in Clause 12 continues for more than 2 months, either party may terminate this Agreement by giving at least 1 month Notice to the other party.

15.3   Either party may terminate this Agreement by giving 1 month prior Notice to the other party, subject to a *pro rata* adjustment of fees or refund of any advance payment as set out in Schedule B.

15.4   Without prejudice to any rights the Customer may have at law, the Customer may terminate this Agreement immediately by Notice if the Contractor is in breach of any term and such breach is not remedied within 30 days of receipt of such Notice.

16.   DISPUTE RESOLUTION

16.1   In the event of a dispute arising between the parties in respect of any right or obligation under this Agreement, each party covenants with the other in good faith to take all steps necessary to attempt to resolve the dispute.

16.2   In the event that the parties are unable between themselves to resolve a dispute within a reasonable period having regard to the nature of the dispute, then either party may apply to the Western Australia alternative dispute resolution centre for determination under the ADRoIT Principles.

17.   NOTICES

17.1   All notices ("Notice") must be in writing in English signed by an officer of the sender. Unless delivered personally, all Notices must be addressed to the appropriate address set out in Schedule C or as otherwise notified in writing in accordance with this provision. Notices shall be deemed to have been received two (2) days after the posting if mailed in accordance with these terms. Any Notice sent by facsimile or electronically shall be deemed received on the day after the day of sending.

17.2   A Notice shall be deemed to be in writing if sent by post or by any form of electronic communication that is electronically date stamped or which produces an electronic record of the date and time of sending, including without limitation emails and facsimiles.

18.   GENERAL PROVISIONS

18.1   **(Law and Jurisdiction)** This Agreement is governed by and is to be construed according to the laws of Western Australia and the parties agree to submit to the jurisdiction of the Courts and tribunals of that State/Territory.

18.2   **(Relationship)** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.

18.3   **(Entire Agreement)** The parties agree that this Agreement constitutes the entire agreement between the parties and any prior arrangements, agreements or representations are superseded on execution of this Agreement.

18.4   **(Invalidity**) If any provision of this Agreement is invalid under any law the provision will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid provision will be deleted from the Agreement and the remaining provisions will remain in full force and effect.

18.5   **(Waiver)** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.

18.6   **(Implied Terms)** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.

18.7   **(Assignment)** This Agreement may not be assigned by either party without the prior written consent of the other party.

18.8 (**Counterparts**) This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement provided that those counterparts have been exchanged.

18.9 (**Advice**) Each party acknowledges and represents to each other that it has had the opportunity to seek and obtain separate and independent legal advice before entering into this Agreement. If either party has entered this Agreement without first taking legal advice it has done so at its sole and absolute discretion and it will not be entitled to rely upon the absence of legal advice as a defence to any breach of any of the provisions of this Agreement.

19. DEFINITIONS

19.1 These words and phrases have the following meanings:

"**Accept**"/"**Acceptance**" means formal acceptance as set out in Clause 6.

"**Acceptance Testing**" means the tests undertaken for Acceptance of the Software set out in Schedule D.

"**Agreement**" means this software development agreement including the Schedules and any amendments/variations in writing signed by both parties.

"**Certificate of Acceptance**" means a certificate provided by the Customer to the Contractor on successful completion of the Project.

"**Commencement Date**" means the date of this Agreement.

"**Confidential Information** means:

(a) all the Customer's information of whatsoever kind or nature that is expressed to be confidential either by the use of words such as "private", "in confidence", "strictly confidential", "not to be disclosed," and all other information which by its nature is confidential including but not limited to business records, employment records, agreements or arrangements with customers, suppliers and/or contractors and advices and/or reports to the Customer;

(b) all information of whatsoever kind or nature relating to the affairs of third parties in the possession of the Customer and to which the Contractor may have access to at any time during the Term;

Confidential information *excludes* all information which is or becomes at any time in the public domain except where such information comes into the public domain as a consequence of any act or omission by a party constituting a breach of this Agreement.

"**Force Majeure**" means any act, circumstance or omission over which the Contractor or the Customer could not reasonably have exercised control.

"**Intellectual Property Rights**"/"**IPR**" means rights in all intellectual property including copyright and moral rights, circuit layouts, designs, patents and trade marks.

"**Object Code**" means any code produced from the Software Source Code, usually in machine-readable form.

"**Project**" means the Software application development required by the Customer, the subject of this Agreement.

"**Software**" means the computer application/s and programs developed pursuant to this Agreement and include the Source Code and Object Code; it includes any supporting documentation and manuals and includes any updates provided by the Contractor pursuant to this agreement.

"**Source Code**" means the Software in human readable language and which is necessary for understanding, maintaining, correcting, modifying and enhancing the Software.

"**Tax Invoice**" means an invoice that is GST compliant.

"**Term**" means the period set out in Clause 1 provided that the Term may be a shorter period if this Agreement has been lawfully and properly terminated by either party pursuant to this Agreement.

EXECUTED by the parties on the day first mentioned.

SIGNED BY   )
)
_____   )
)

ACN _____ pursuant to
Section 127 of the *Corporations Act* 2001
(Cth) in the presence of:

_____

Title:

Print Name:

_____

Signature of Witness

Print Name:

SIGNED BY   )
1iT Pty Ltd   )
ACN 092 074 247 pursuant to)
Section 127 of the *Corporations Act* 2001)
(Cth) in the presence of:

_____

Director

Print Name:

_____

Signature of Witness

Print Name:

SCHEDULE A – Scope & Specifications

In-Scope

The definition of what is in scope is described in the Wireframes & Scoped quote.

Out-of-Scope

Anything not clearly defined in the Wireframes & Scoped Quote is considered out of scope unless it is essential to complete the functionality described within them.

SCHEDULE B – Fees Payable

The fees payable and the schedule are defined in the Scoped Quote.

SCHEDULE C - Notices

(a)   the Customer

of: _____

_____

Attention: _____

Facsimile Nº: _____   Email: _____

(b)   1iT Pty Ltd (the Contractor)

of: _____

_____

Attention: _____

Facsimile Nº: _____   Email: _____

SCHEDULE D – Acceptance Testing

Item for Acceptance Testing	Timeframe for completion of testing
System meeting the scope specified in Schedule A	Within 30 days of completion