



**TERMS & CONDITIONS**  
(as at 1 August 2017)

These terms and conditions (“**Terms**”) apply to all Agreements entered into by Industry Connect Australia with you, unless otherwise expressed to the contrary in any such Agreement.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Terms and in any Agreement, unless the contrary intention appears:

“**Agreement**” means any agreement, arrangement or services supplied between the Parties.

“**Claim**” means any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs, whether direct or indirect, however calculated.

“**Confidential Information**” means any information:

- (a) relating directly or indirectly to the business of a Party or their respective suppliers or customers;
- (b) disclosed by either Party to the other on the express basis that such information is confidential; or
- (c) which might reasonably be expected by either Party to be confidential in nature,

provided that where information relates exclusively to one Party, nothing in these Terms or any Agreement shall require that Party to maintain confidentiality in respect of that information.

“**GST**” means goods and services tax in terms of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), at the rate prevailing from time to time.

“**Insolvency Event**” means, in respect of any Party, the occurrence of one or more of the following events:

- (a) except for the purposes of a solvent reconstruction or amalgamation, an application is made, proceedings commenced, or a resolution is passed or proposed in a notice of meeting for the winding up, dissolution, official management or administration of the relevant Party; or
- (b) the relevant Party enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or
- (c) the relevant Party is, becomes or is deemed insolvent or bankrupt within the meaning of the *Corporations Act 2001* (Cth) or relevant legislation; or
- (d) a receiver, receiver and manager, official manager or provisional liquidator is appointed with respect to the relevant Party or any of its assets.

“**Industry Connect Australia**” means Industry Connect Australia Pty Limited (ACN 619 730 184) at Melbourne, Australia and any Related Entity.

“**Interest Rate**” means 20% per annum calculated on a daily basis from the date on which payment was due through to the date of payment.

“**IP Rights**” means all intellectual property rights anywhere in the world (including present and future intellectual property rights) relating to any confidential information, business names, copyright, database rights, patents, know-how, trade or service marks, trademarks, designs, websites, software, software programmes and source code and all variations, modifications or enhancements to each of them; in each case whether registered or unregistered, and including any application or right to apply for the grant of any of the foregoing, and all rights or forms of protection which have equivalent or similar effect to any of the foregoing which may subsist anywhere in the world; being separately developed and owned by and/ or licensed to Industry Connect Australia.

“**Party**” means either Industry Connect Australia or you as the context dictates.

“**Related Entity**” includes any “related entity” (as defined in the *Corporations Act 2001* (Cth)) and, without limitation, Industry Connect Australia Limited (NZ company number 4963459) and MVP Studio Limited (NZ company number 5894248).

“**working day**” means a day on which banks and financial institutions are open for business in Sydney and Melbourne, Australia, other than a Saturday, Sunday or public holiday.

1.2 In these Terms and any Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) a reference to a clause number is a reference to its sub-clauses;
- (c) a reference to a clause is a reference to a (sub-)clause of these Terms or any Agreement;
- (d) words in the singular number include the plural and vice versa; and
- (e) monetary references are references to Australian currency unless otherwise denominated in any other currency.

**2. INTELLECTUAL PROPERTY**

2.1 The IP Rights are the property of and all proprietary rights in the IP Rights reside solely with Industry Connect Australia. You acknowledge that you:

- (a) have no right or claim in the IP Rights; and
- (b) will not dispute Industry Connect Australia’s ownership of the IP Rights in any way.

2.2 (a) Industry Connect Australia grants to you a non-exclusive non-transferable licence, during the term of any Agreement, to use Industry Connect Australia IP Rights only in relation to that Agreement, subject to you complying with the conditions set out in that Agreement, the terms of any licence applicable to any such IP Rights, and any reasonable directions given by Industry Connect Australia from time to time relating to any use of the IP Rights.

(b) You acknowledge that any goodwill relating to the IP Rights which may result from its use of the IP Rights is and remains the property of Industry Connect Australia.

2.3 You will not during the term of any Agreement or after termination except as otherwise provided in that Agreement:

- (a) apply for registration as a trade mark or company of any words or logos that are identical with or deceptively or confusingly similar to the IP Rights; or
- (b) directly or indirectly challenge or contest the validity of the IP Rights; or

- (c) represent that you have any right, title or interest in the IP Rights except as expressly granted in any Agreement.
- 2.4 You will not be liable for any damage or loss arising from the infringement of any third party's intellectual property rights by its use of the IP Rights in accordance with any Agreement.

### 3. INDEMNITY & LIMITATION OF LIABILITY

- 3.1 Each Party (the "**Indemnifying Party**") will indemnify the other Party and each of the other Party's officers, employees, subcontractors and agents (each an "**Indemnified Party**") against any Claim which may be made or brought against an Indemnified Party, or which an Indemnified Party may sustain or incur, arising from or in connection with:

- (a) any breach by the Indemnifying Party or its officers, employees, subcontractors and agents of the terms of any Agreement;
- (b) any wilful, unlawful or negligent act or omission or act of fraud or dishonesty by the Indemnifying Party or its officers, employees, subcontractors and agents in the performance of your obligations under any Agreement; or
- (c) any Claim by a third party caused or contributed to by the Indemnifying Party or its officers, employees, subcontractors and agents,

except to the extent that any liability, loss, damage, cost or expense is solely and directly caused by the gross negligence or deliberate default of the Indemnified Party, and in any case the Indemnifying Party's liability shall be limited to the aggregate monies paid under the relevant Agreement during the immediately preceding twelve month period.

### 4. TERMINATION

- 4.1 Either Party may terminate an Agreement, immediately on giving written notice to the other Party, if any of the following events occur:

- (a) the other Party fails to make payment under an Agreement within five (5) working days of the due date;
- (b) an Insolvency Event occurs in relation to the other Party;
- (c) the other Party does not comply with any of its obligations under clause 2 or 5.4 of these Terms or
- (d) the other Party fails to comply with any other material obligation under these Terms or any Agreement and, if capable of remedy the other Party does not remedy such default within five (5) working days of receipt of notice from the Party requiring the other Party to remedy such default.

- 4.3 Upon termination of any Agreement:

- (a) all rights granted to by either Party shall terminate and revert to the relevant Party;
- (b) the obligations of a Party which have accrued but have not been discharged at the date of termination will not be affected by termination;
- (c) all moneys owing by a Party to the other Party under such Agreement as at the date of termination will immediately become payable;
- (d) you will discontinue its use of the IP Rights and return to Industry Connect Australia all copies of any Confidential Information of Industry Connect Australia; and
- (e) Industry Connect Australia will return to you all copies of any of your Confidential Information.

- 4.4 This clause 4 and clause 2, 3 and 5.4, shall survive termination of the relevant Agreement.

### 5. GENERAL

- 5.1 This Terms and all Agreements will be governed by and construed in accordance with the laws of Victoria, Australia.

- 5.2 An Agreement may be amended only by another agreement executed by the Parties.

- 5.3 Neither Party can assign, subcontract, charge or otherwise transfer the benefit of any Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.

- 5.4. Each Party shall maintain as confidential at all times, and shall not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
- (b) use for itself; or
- (c) use to the detriment of the other Party, any Confidential Information except:
  - (i) as required by law;
  - (ii) as is already or becomes public knowledge, otherwise than as a result of a breach by the Party disclosing or using that Confidential Information of any provision of the relevant Agreement;
  - (iii) as authorised in writing by the other Party; or
  - (iv) to the extent reasonably required by the relevant Agreement (and, without limiting the effect of this clause, a Party may disclose Confidential Information only to such of its officers, contractors or professional advisers, on a "need to know" basis, as is reasonably required in order for the implementation of such Agreement).

- 5.5 Each Agreement contains the entire agreement of the Parties with respect to its subject matter. It sets out the only conduct relied on by the Parties and supersedes all earlier conduct or agreements (whether written or verbal) by the Parties with respect to its subject matter.

- 5.6 No Agreement implies that the Parties intend constituting a partnership or constitutes a relationship of employer and employee.

- 5.7 Neither Party shall be liable for any act, omission or failure under any Agreement if that act, omission or failure arises directly from a cause beyond the reasonable control of the Party concerned, including (without limitation) extreme weather conditions, civil disruption or industrial action, provided that:

- (a) the Party claiming the protection of this clause shall, as soon as possible after becoming aware of such cause or the likelihood of such cause, give the other Party written notice accordingly;
- (b) notwithstanding the intervention of such cause, each Party shall continue to use its best endeavours to perform its obligations as required under the relevant Agreement (excluding any obligations which have already been duly performed as at the date of the relevant cause) despite that cause.
- (c) in any such event, neither Party shall be deemed to have accepted any extra costs which may be incurred or sustained by the other Party through a delay resulting from the cause.

- 5.8 Any dispute, difference or question arising between the Parties:

- (a) as to the construction of an Agreement;
- (b) concerning anything contained in or arising out of such Agreement;
- (c) as to the rights, liabilities or duties of the Parties;
- (d) as to any other matter touching upon the relationship of the Parties in respect of such Agreement including claims in tort as well as in contract,

shall be referred to the arbitration of a single arbitrator to be agreed upon by the parties, or failing agreement, to be nominated, on the application of any Party, by the President for the time being of the Legal Institute of Victoria or his or her nominee. Any dispute difference or question as to the jurisdiction of the arbitrator shall be determined by the arbitrator. The arbitration shall

- be conducted in accordance with and subject to the provisions of the arbitration statutes for the time being in force in Victoria, Australia. Such arbitration shall be a condition precedent to the commencement of any action at law.
- 5.9 A notice or other form of communication pursuant to an Agreement shall be deemed to have been served as follows:
- (a) if given or delivered personally or by courier delivery, at the time when given or delivered; or
  - (b) if sent by pre-paid post, at the expiration of 48 hours after the document was delivered into the custody of the postal authorities.
  - (c) if sent by email, at the time that the email would ordinarily be delivered unless the sender receives notice of the non-delivery of the email.
- 5.10 A notice of other form of communication which, but for the provisions of this clause 5.10 would be deemed to be received after 5.00pm on a working day or on a day which is not a working day, shall be deemed to be received at 8.30am on the next following working day.
- 5.11 Interest accrues on each unpaid amount which is due and payable by one Party to the other Party under any Agreement (including interest under this clause) at the Interest Rate and:
- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier; and
  - (b) where relevant, both before and after judgment (as a separate and independent obligation).
- 5.12 No failure to exercise and no delay in exercising any right, power or remedy under any Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 5.14 An Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.
- 5.15 If anything in any Agreement is unenforceable, illegal or void, then it is severed and the rest of any Agreement remains in force.
- 5.16 The Parties shall each bear their own costs and expenses incurred in connection with the preparation, negotiation and execution of any Agreement.
- 5.17 Any covenants in these Terms and any Agreement expressed to be for the benefit of any Related Entity are given for the benefit of the Related Entity, are enforceable by it.
- 5.18 You irrevocably appoint Industry Connect Australia to be your attorney to do and execute anything which you covenant or agree to do or execute under any Agreement.