**SOFTWARE DEVELOPMENT AGREEMENT**

This **AGREEMENT** is made this day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 (the “**Commencement Date**”)

**BETWEEN**

**SUPERFAN LIMITED**, a Company incorporated under the laws of the Federal Republic of Nigeria ith business address at of 730A Babatunde Atere Street, Omole Phase 2, Lagos Nigeria (the “**Principal**”) which expression shall include their legal representatives and assignees on one part

**AND**

**ADEWUMI ADEBAYO** of 25 Queen St, Alagomeji-Yaba, Lagos,[debaryour@gmail.com and phone number +234(908)-155-1546] (the “**Developer**”) which expression shall include their legal representatives and assignees on the other part.

**WHEREAS**

1. The Principal is a limited liability company incorporated under the Companies and Allied Matters Act 2020 and is engaged in the business of managing and commercializing, technology, social media solution and digital platforms.
2. The Developer is engaged in software development and ICT solutions and has represented to the Principal that he has the experience, capability and skill to deploy and deliver the services and deliverables required by the Principal as provided under this Agreement (the “**Services**”).
3. The Principal has appointed the Developer and the Developer accepts the appointment to provide the Services for the design, development and implementation of the Fanect mobile and web application (the “**Software**”) in accordance with the solution requirement and design document and Specification agreed by the Parties.

**NOW THEREFORE IN CONSIDERATION OF MUTUAL COVENANTS AND PROMISES HEREIN UNDER CONTAINED, BOTH THE DEVELOPER AND THE PRINCIPAL AGREE AS FOLLOW**:

1. **DEFINITIONS**:

In this Agreement, unless the context otherwise requires:-

“Confidential Information” means all confidential, proprietary or sensitive information of either Party, whether tangible or intangible, oral or written including any information which may have been disclosed by either Party prior to or after the execution of this Agreement whether disclosed orally or in written or in electronic form. The term Confidential Information shall also include any and all information and/ or data which is obtained/ furnished/ derived, whether in writing, pictorially, in machine readable form, orally or by observation of the representative of the Parties during their visits, including but not limited to; information relating to and or including infrastructure, released or unreleased software or hardware products, the marketing or promotion of products, business plans, practices or policies, trade secrets, source code, object code, patents, inventions, firmware, designs, formulas, specifications, financial information and projections, numbers, lists of drivers and potential drivers, list of suppliers and potential suppliers, lists of customers and potential customers, architecture, equipment lists, employee lists, management methods, systems, data, applications, business models, materials, know-how, working methods, processes, procedures, technical data, data and statistics, engineering, customer information, market intelligence with regard to customer of either Party, business strategies of either Party, manufacturing techniques, operating techniques, and all manuals, documents, reports, spread sheets, files, market information, computer disks and tapes (whether machine or user readable) and other written or electronic information pertaining thereto. Confidential Information shall also include any copy, abstract, extract, sample, note or module of any Confidential Information;

“Delivery Date” means the date of the full acceptance of the Software by the Principal after the completion of the User Acceptance Testing and the resolution of all snags, defects and issues identified..

**“**Intellectual Property Rights**”** means all present and future worldwide patents, trademarks, service marks, trade names, good will, registered designs, design rights, database rights, copyrights, inventions, rights in computer software and other forms of intellectual or industrial property and all registrations, applications, renewals, extensions, combinations, divisions, or reissues of the foregoing.

“Specification” means and includes the functional requirements, wireframe design, scope document and relevant technical requirements relating to the Scope of Services and other technical documents signed off by the Principal.

“Services” means and include, the scope of services outlined in Schedule 1 to this Agreement for the development of the Software in accordance with the Specification and within the timeline agreed by the Parties.

* 1. “Software” means as defined in recital 3 above and include, but not limited to, software program, mobile application to be developed by the Developer pursuant to this Agreement in accordance with the Specifications.;
  2. “Term” means the Commencement Date for design and implementation of the Software to the end of the Post Delivery Support Period.

1. **INTERPRETATION**: In this Agreement unless the context otherwise requires: -
   1. a reference to this Agreement or another instrument includes any variation or replacement of this Agreement or that instrument and includes all Schedules attached to this Agreement, any new Schedules, annexure and exhibits to this Agreement or that instrument;
   2. a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it an consolidations, amendments, re-enactments or replacements of any of them;
   3. the singular includes the plural and vice versa, words including one gender include other genders;
   4. a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) transferees and permitted assigns;
   5. heading and marginal notes have been inserted for guidance only and do not form part of the context;
   6. a reference to a thing (including, without limitation, any amount) is a reference to the whole or any part of that thing and a reference to a group of persons is a reference to any two or more of them collectively and to each of them individually;
   7. person includes a firm, a company, partnership, joint venture, association, corporation or other body corporate, a person, an unincorporated association or an authority;
   8. a reference to a body or authority which has ceased to exist includes the body or authority which now serves substantially the same objects as the body or authority referred to;

* 1. a reference to the president of a body or authority, if there is not such person, is a reference to the senior officer of or to the person who fulfils the duties of president in the body or authority;
  2. the recitals form part of this Agreement.

1. **DEVELOPMENT**
   * The Developer accepts the engagement by the Principal to develop the Software outlined according to the Specifications and details in the scope of work / [prototype document](https://www.figma.com/file/Gldp4mWUvceBNGg6NEIskU/FaNect?node-id=0%3A1).
   * The Developer shall complete the development of the Software according to the milestones and timelines set out in the scope of work document and estimate software completion at 7 - 9 weeks from the Commencement Date, and the completed Software and solution shall be delivered in its entirety to the Principal.
   * The Developer shall notify the Principal on such date when the Software or any component of it is ready for User Acceptance Testing (“UAT”), and thereafter the Parties will undertake the UAT to validate that the Software as designed and implemented is functional without any defects.
   * The Developer shall be obliged to provide all useful information for the successful operation of the Software upon completion of the Software.

1. **DURATION**

This Agreement shall come into force on the Commencement Date and shall remain in force during the Term unless terminated in accordance with this Agreement.

1. **WORK PRODUCT**

“Work Product” means the Software and any tangible or intangible results, functionalityor deliverables that the Developer is obligated to create, deliver, or actually delivers to the Principal under this Agreement, including, but not limited to, designs, graphics, drawings, illustrations, configurations, explanatory notes, computer programs, source code, files and documentation or other information,, and any intellectual property developed in connection therewith. The Work Product may be delivered in parts according to the milestones of the timeline of the engagement. At the end of the engagement the parts of the Work Product must work coherently as one complete Work Product

1. **DELIVERY**

The Software shall function in accordance with the specification and details set out in Schedule 1 to this Agreement:

1. The development and delivery of Software will be agile based, hence there will be a regular review agreed by both Parties. If the Software as delivered does not conform with the Specifications as set out in scope of work, the Principal shall raise the concerns. However, the Parties agree that the Developer as the subject matter expert shall continue to have an obligation to deliver the Software in accordance with the Specification, and the inability of the Principal to identify defects, snags or unapproved deviations from the Specification shall not excuse the Developer from responsibility or liability in this regard.
2. The Principal shall as soon as practicable provide to the Developer notice of its findings that the Software conforms to the Specifications and details as set out in the scope of work document.
3. The Principal shall provide content (necessary media files, access, text files and any other document required for the Software in a timely fashion) and also cover for all necessary cloud costs, application costs, deployment charges accrued in the course of execution of the software.
4. The Parties hereby agree that time shall be of the essence in the performance of the Services and the Developer shall do all that is expedient and reasonable to ensure the performance of the Services within the time frame stipulated in this Agreement.
5. **PAYMENT**

In consideration of the Services to be provided by the Developer, the Principal hereby agrees to pay the Developer the total amount set out in Schedule 2 to this Agreement for the Services and the Software in the accordance with the agreed milestone (the “Contract Price”)in. The Developer shall be paid by the Principal for the Services as at each milestone within 7 (seven) days of its receipt of the invoices from the Developer.

Any sums payable under this Agreement shall be inclusive of Value Added Tax.

1. **INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE**

The Parties acknowledge and agree that the Principal retains ownership of any creative idea, design, development, invention, works of authorship, know-how, or work results and other Intellectual Property Rights owned or communicated by the Principal prior to the Commencement Date, and the Principal owns any creations and Intellectual Property Rights rights created by or on behalf of the Developer to the extent created as a direct result of the Services and Software under this Agreement.

The Developer expressly acknowledges and agrees that the Software, any and all proprietary materials including Work Product prepared by the Developer under this Agreement shall be considered “works for hire” and the exclusive property of the Principal. These items shall include without limitation any and all deliverables resulting from the Developer’s Services or contemplated by this Agreement. Upon the Principal’s request, the Developer will provide the Principal with physical embodiments of all IP and proprietary materials created and owned by The Developer pursuant to this Agreement. To the extent that any and all IP and proprietary materials prepared by The Developer under this Agreement is not considered work made for hire, the Developer assigns to the Principal royalty-free, worldwide, perpetually, and irrevocably, all rights in such IP and proprietary materials to the extent permitted by law.

The Developer warrants that it has, and shall at its own cost obtain all necessary rights and licenses (including the right to sublicense and all necessary renewals), to Intellectual Property subsisting in any matter, thing or process (including but not limited to Software, used or to be used by it in providing Services to the Principal, or delivered or to be delivered by it.

The Developer agrees not to claim any such ownership in the Software’s intellectual property at any time prior to or after the completion and delivery of the Software to the Principal.

During the development of the Software, the Developer shall set up a repository where all source codes and related information in respect of the Software shall be shared , with the Principal having access. Upon fully implementation of the Software development, the Developer shall handover the source codes in respect of the Software to the Principal.

1. **CHANGE IN SPECIFICATIONS**

The Principal may request that reasonable changes be made to the Specifications and details to suit the intended objective and functional requirements of the Software; these may include tasks associated with the implementation of the specifications.

* + If the Principal requests such a change; the Developer will use its best efforts to implement the requested changes at no additional expenses to the Principal and without delaying delivery of the Software. In the event that the proposed change will, in the sole discretion of the Developer, require a delay in the delivery of the Software or would result in additional expense to the Principal, then the Principal and the Developer shall confer and the Principal may either withdraw the proposed change or require the Developer to deliver the Software within the proposed change and subject to the delay and or additional expense. Any such additional expense shall be agreed by the Parties. Any such delay that warrants from a proposed change shall be subjected to a practicable timespan and will lead to consequential adjustment to Delivery Date. The timeline for changes that will require process change will be agreed on by both Parties and changes will also be feature based as subject to agreement by both Parties.
  + The Principal agrees and acknowledges that the judgment as to if there will be any delay or additional expense shall be made solely by the Developer, provided that if the Principal disagrees with decision of the Developer with respect to any change request, the Parties shall discuss and re-evaluate the impact, and if necessary seek a third opinion.
  + The Parties acknowledge and agree that the Developer shall be entitled to charge additional fees for change request which are significant deviations from the Specification or an addition to the Scope of Work under this Agreement. Such additional fee shall be agreed in writing by the Parties.

1. **CONFIDENTIALITY**
   * The Developer shall not disclose to any third party the business of the Principal, details regarding the Software, including, without limitation to any information regarding the Software’s code, the details and specifications, or the Principal’s business.
   * The Developer shall not make copies of any information on the Principal’s business or any content based on the concepts contained within the Software document or communications made in the course of business with the Principal or personal use or for distribution unless requested to do so by the Principal or except for solely the benefit of the Principal.
2. **DEVELOPER WARRANTIES**

The Developer represents and warrants to the Principal the following:

1. That the Software will operate free from any material defects, and that the Principal will be able to operate the Software without material problems or interruptions, in accordance with the Specifications. A material defect is defined as a defect which either (a) renders the use of the entire software impossible for all practical purposes or (b) represents a substantial nonconformity to the specifications contained in the Agreement;
2. Development and delivery of the Software under this agreement are not in violation of any other agreement that the Developer has with another party.
3. The Software will not violate the intellectual property rights of any other party.
4. For a period of 24 (Twenty-four) weeks after the Delivery Date **(the “Post Delivery Support Period”),** the Software shall operate according to the specifications and details set out in the Scope of work document. If the Software malfunctions or in any way does not operate according to the specifications within that time, then the Developer shall take any reasonable steps to fix the issue and ensure the Software operates according to the Specifications and details set out in the scope of work documents and requirement signed off by the Parties.
5. The developer shall provide the required support services for the Solution during the Post Delivery Support Period
6. Any malfunctions due to Software tampering, unnecessary updates to the original source code, push or pull requests, software updates or adjustments made by the Principal without notification to the Developer nullifies the warranty provided by the Developer
7. **DATA PROTECTION**

The Developer acknowledges that, in providing Services to the Principal, it may collect, receive or process personal data of individuals on behalf of the Principal. Any personal data collected or processed shall be used, processed, reserved or stored solely in furtherance of this Agreement between the Parties and under applicable laws. The Developer shall ensure full compliance with the Nigeria Data Protection Regulation, 2019 (NDPR) and other applicable Data Protection Laws in processing any personal data disclosed by the Principal or collected on behalf of the Principal.

1. **FAILURE TO PROVIDE THE SERVICES**

* The Parties acknowledge and agree that the fees paid to the Developer for the Services shall be refunded in the event of negligence or failure of the Developer to provide the applicable deliverables at the relevant milestones without any justification. The Parties acknowledge that the receipt by the Developer of the milestone payments under this Agreement, shall not be deemed or construed as a full acceptance by the Developer of the Solution or the satisfactory performance of the Services.
* The Parties agree that s[hould the](https://www.lawinsider.com/clause/penalty-clause) Developer fail to provide the Services in accordance with the milestone or delays in providing any deliverable due under this Agreement, the Principal shall be entitled at its option, to deduct 2.5% of the Contract Price for each week of delay, up to a maximum of 12.5%.
* The Parties agree that the Software shall be delivered on or by the 27th of September, 2021, provided that the Developer if required may be granted a two (2) weeks extension, after which the penalty provision under this clause shall apply.

1. **INDEMNIFICATION**

The Developer agrees to indemnify, defend, and protect the Principal from and against all lawsuits, expense and costs of every kind pertaining to the Software including legal fees due to the Developer’s infringement of the intellectual rights of any third party or the failure of the Software to function as contracted.

1. **NO MODIFICATION UNLESS IN WRITING**

No modification of this Agreement shall be valid unless in writing and agreed upon by both parties.

1. **EXPRESS TERMINATION**
2. **EXPRESS TERMINATION BY PRINCIPAL:**

The Principal may expressly terminate this agreement for “Cause” after giving the developer notice of the reason either written or delivered by mail.

Cause means:

* + Developer has breached any of the provisions of this Agreement and the breach continues for 14 days following receipt of a notice from the Principal.
  + Developer committed fraud, misappropriation, or embezzlement in connection with the Principal’s business.

**In the event of an express termination from the Principal**:

* The Developer shall compensate the Principal to the tune of 100% (One Hundred Percent) of the cumulative cost of previous timeline payment.

1. **EXPRESS TERMINATION BY DEVELOPER:**

The Developer may also terminate this agreement for “Cause” if the Principal defaults in the performance of any of its material duties or obligations and is not cured within 21 days of the receipt of written notice of the said default.

**In the event of an express termination from the developer:**

* The Principal shall compensate the Developer to the tune of 100% (One Hundred Percent) of the cumulative cost of both the previous and current timeline payment.

1. **DISCONTINUATION BY BOTH PARTIES**

* If the principal chooses to discontinue the Software development (the “Project”) or seek withdrawal of the Project continuation from the Developer for reasons not bounded by this Agreement, the Principal must provide a two weeks notice of the reason either written or delivered by mail . This discontinuation will oblige reimbursing the developer at the end of a milestone or with the next milestone payment as shown in the table below.

|  |  |
| --- | --- |
| Project discontinuation at end of milestone 1 | Milestone 1 |
| Project discontinuation between milestone 1 and 2 | Milestone 2 |
| Project discontinuation at end of milestone 2 | Milestone 2 |
| Project discontinuation between milestone 2 and 3 | Milestone 3 |

* If the developer chooses to discontinue the project or seek withdrawal of the project continuation with principal for reasons not bounded by this agreement, the developer must provide a two weeks notice of the reason either written or delivered by mail. This discontinuation will oblige reimbursing the principal with previous milestone payment as shown in the table below.

|  |  |
| --- | --- |
| Project discontinuation between milestone 1 and 2 | Milestone 1 |
| Project discontinuation between milestone 2 and 3 | Milestone 2 |

1. **RESPONSIBILITY UPON TERMINATION**

Any information that includes (i) all written and oral technical information (ii) inventions, designs, processes, procedures, formulas, improvement, technology or method; (iii) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source codes, object codes, flow charts, databases provided by the Principal to the developer upon the termination of this agreement should be returned to the Principal.

1. **DISPUTES AND CONFLICT RESOLUTION**

All disputes, differences and questions which may at any time arise between the parties to this agreement shall be referred to mediation

Where the Parties are unable to settle through mediation by their respective representatives within 14 (fourteen) days from the date of their first meeting (or such other extended period as the Parties may agree) or if their resolution of the matter is not acceptable to either or both Parties, either Party may refer the matter for resolution by arbitration, by serving a notice (an “Arbitration Notice”) on the other Party.

The Arbitration Panel shall be appointed in accordance with the Arbitration and Conciliation Act Laws of Nigeria 2004 or such other Act governing arbitration in Nigeria as may be applicable at the time. The arbitration panel shall consist of a sole arbitrator. In the event that the Parties fail or refuse to appoint a sole arbitrator within a period of 14 (fourteen) Days after the submission of the notice of arbitration, the President of the Chartered Institute of Arbitrators UK, Nigeria branch shall, on the application of either Party appoint the sole arbitrator.

The seat of arbitration shall be Lagos, Nigeria, and shall be conducted in the English language. The arbitral award shall be final and binding between the Parties except in instances of misconduct on the part of the arbitrator or error on the face of the arbitral award.

Each Party shall be responsible for its share of the arbitration fees in accordance with the applicable Rules of Arbitration and the Parties shall evenly share the costs of the arbitrator. Where a Party who failed to proceed with arbitration unsuccessfully challenges the arbitrator's award in a competent Court of Law, or fails to comply with the arbitrator's award, the other Party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

This clause shall survive the termination of this Contract, and shall accordingly apply at all times to disputes and differences of opinion existing or arising between the Parties hereto, concerning this Agreement or any matter hereunder. Nothing in the clause shall preclude the rights of either Party from seeking injunctive relief from a court of competent jurisdiction.

**IN WITNESS OF WHICH,** each of the Parties has executed this Agreement in the manner below the day and year first and above written.

**SIGNED BY THE WITHIN NAMED DEVELOPER**

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(NAME AND TITLE) (DATE)

**SIGNED BY THE AUTHORISED REPRESENTATIVES OF THE WITHIN NAMED PRINCIPAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(NAME AND TITLE) (DATE)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(NAME AND TITLE) (DATE)

**Schedule 1 (Scope of Services and Specifications)**

**Scope of Services**

|  |  |
| --- | --- |
| **S/N** | **Description** |
| 1 | Design, Build and Implementation of the Software in accordance with the Specification |
| 2 | Undertake tests to validate that the Software has been designed and functions in accordance with the Specification defined and igned off |
| 3 | Design and implement API for integration of the Software |
| 4 | Build the mobile application and web application with functionalities as agreed in the specification and functional document |
| 5 | Provide bi-monthly update report to the Principal |

**Specification**

The Specification shall include the s functional and other technical document and designs agreed by the Parties under this engagement including the Scope of work Document -- [Fan Nect user Stories.xlsx - Google Sheets](https://docs.google.com/spreadsheets/d/1kXosIAkjiVz385SIQRJqfxYTFXupW__U/edit#gid=1805958175) which sets out the delivery approach and milestones.

**Schedule 2 (Payment Terms)**

The Principal shall pay the Developer the total sum of ~~N~~6,500,000.00 (Six Million Five Hundred thousand Naira Only) for the Services, Software and the deliverables under this Agreement, upon delivery of each milestone, provided that the Principal shall be entitled to make such deductions to the Contract Price or any milestone payment due for delays by the Developer in providing the Services.