

Website and Software Development Terms

1. Application

- 1.1 These Terms constitute an offer by us (Agend Systems Pty Ltd) to supply you with the Services on the Terms to the exclusion of all other terms and conditions (including but not limited to those you may purport to impose, whether in any order you submit to us or otherwise). The offer made by us is accepted by you:
- (a) signing and returning a copy of these Terms;
 - (b) accepting an Estimate in the manner set out in clause 2.1; or
 - (c) otherwise directing us to provide any Services after having received these Terms.
- 1.2 You agree that these Terms will apply to all Services we supply to you and you agree:
- (a) that we will charge you for our Services actually rendered in accordance with the applicable SOW (as amended from time to time in accordance with clause 3.4 and clause 3.6);
 - (b) to pay for our Services within 21 calendar days of invoice, in the manner set out in clause 7;
 - (c) that, where our invoices are overdue, we may take certain steps as a result, including charging you interest, or suspending the provision of our Services, as set out at clause 7.7;
 - (d) to provide us with timely instructions in accordance with clause 5;
 - (e) to test all Deliverables within 14 calendar days (or such longer period agreed in the Acceptance Test Plan), as set out at clause 6; and
 - (f) that Developed Intellectual Property will be owned by us, and licensed to you in the manner set out in clause 8.
- 1.3 Where we provide any hosting, maintenance or support services, consulting services, search engine marketing or optimisation services, or other services beyond the Services, these will be subject to further terms between you and us.
- 1.4 These Terms cannot be varied in any way by our employees, agents or contractors, and may only be varied in writing by one of our directors. Once you have accepted these Terms, any variation must be mutually agreed in writing by you and one of our directors.
- 1.5 To the extent permitted by law, all implied terms and conditions are excluded.

2. Estimates and Statement of Work

- 2.1 Our Estimates are valid for 30 calendar days from their date unless indicated otherwise in the Estimate, or withdrawn or varied by us by notice prior to our receipt of your notice of acceptance. You can accept our Estimate during this period by entering into a SOW with us for the Services and Deliverables which are the subject of the Estimate.
- 2.2 If any changes to an Estimate are necessary this may only be done:
- (a) prior to acceptance, by us issuing you with a revised Estimate; or
 - (b) following acceptance, by express written agreement by both you and us in accordance with clause 3.4.
- 2.3 Our Estimates form part of our Confidential Information. Each Estimate is provided to you on the condition that you do not use or disclose the contents of the same to any third party other than your advisers and contractors (including our estimated price). To avoid doubt, if you do not accept our Estimate, you have no right to use or disclose the contents of the Estimate and we retain all Intellectual Property Rights in the Estimate.
- 2.4 Disbursements included in an Estimate are estimates only. You are responsible for paying the Disbursements in full, regardless of any inconsistency between the actual costs of Disbursements and the estimates stated in our Estimate. We will confirm applicable Disbursements with you before they are incurred, if they vary significantly from our Estimate and will obtain your prior written approval before incurring them.

3. Services and Deliverables

- 3.1 We will supply the Services and Deliverables to you as specified in an SOW, in accordance with these Terms.
- 3.2 We will not provide any Services or Deliverables outside the scope of an applicable SOW without your clear direction to do so in compliance with clause 3.4. This further work will be charged to you in accordance with clause 4.1.
- 3.3 **Personnel.**
- (a) We will appoint sufficient staff of suitable training and skills to provide the Services and Deliverables.
 - (b) Following consultation with us, you may by written notice require us to replace personnel assigned to the provision of the Services or Deliverables, and we must promptly (and in any event within seven (7) days) replace such personnel, if at any time:
 - (i) you reasonably consider that the performance of such personnel is unsatisfactory; or
 - (ii) such personnel commit a breach of any of your policies or procedures with which they were required to comply.
 - (c) We must not replace any Key Personnel without your prior written consent, except where the employment of any Key Personnel is terminated (including resignation) or where the Key Personnel is prevented from performing his or her role due to sickness, incapacity or death or the exercise of leave entitlements.
 - (d) Where Key Personnel need to be replaced, we must replace the Key Personnel

with a suitable person approved in writing by you (acting reasonably) as soon as practicable and, to the extent within our reasonable control, prior to the departure of the existing Key Personnel.

3.4 Change control.

- (a) At any time during the term of this agreement, you may propose a change to the scope of the Services or Deliverables, volume, timing, the manner or place of performance of the Services, or any other subject covered by this Agreement or a SOW (**Change**). The process for addressing a proposal for a Change is as set out in the remainder of this clause 3.4.
- (b) A proposal for a Change will be submitted to us in writing (**Change Request**).
- (c) The parties will discuss each Change Request as soon as practicable. Unless the parties agree not to proceed with a Change Request, we will then prepare a written proposal (**Change Proposal**) which will include the impact (if any) on the schedule, charges and other terms of the relevant Statement of Work and this Agreement. Any amendments to charges will be in accordance with our Fee Schedule.
- (d) Should you elect to accept our Change Proposal, you will, as soon as practicable, but within any proposal validity period set out in the Change Proposal, provide us with written authorisation to perform the agreed Change.
- (e) As soon as practical after receipt of the authorisation from you, we will provide to you an appropriate amendment to this Agreement (or the relevant SOW) to implement the Change. We will start performance of the Change as provided in the agreed amendment upon its execution by you.
- (f) Each party will bear their own costs of preparing and responding to a Change Request or Change Proposal.
- (g) We will not be obliged to implement a Change (other than a minor or incidental one) and you will not be obliged to pay any monies associated with a Change unless the parties have executed an amendment in accordance with sub-clause (e).

3.5 We will endeavour to provide the Services:

- (a) in accordance with any timeframes specified in the applicable SOW, where applicable; or
- (b) in a timely manner, otherwise,

but cannot guarantee that any Deliverables will be supplied by a particular date. Where we believe that any Services or Deliverables are likely to be significantly delayed we will:

- (c) notify you as soon as possible; and
- (d) discuss with you how best we may be able to prioritise your Services and Deliverables.

3.6 Delays.

- (a) **Avoid and mitigate delays.** We must use our best endeavours to anticipate any potential failures by us to perform our obligations by applicable Due Dates and take all reasonable steps to avoid actual or potential delays, including by implementing appropriate safeguards, systems and processes and, where necessary, reprogramming, expediting and adjusting its activities and mitigate and minimise the effects of any delay.
- (b) **Notify of delays.** If we become aware of an actual or potential

delay, we must:

- (i) immediately notify you of that actual or potential delay specifying: (i) the cause of the actual or potential delay; and (ii) the impact of the actual or potential delay, including any impacts on other Due Dates;
 - (ii) take, and ensure that any affected subcontractor takes, all reasonable steps to minimise the delay, without adversely impacting the quality of the Services or Deliverables or resulting in a breach of this Agreement.
- (c) **Your delays.** If you fail to perform an obligation and that failure may cause us to fail to perform one or more obligations by its applicable Due Date, we must, as soon as possible, notify you of the failure by you, the potential delay and the date that the failure must be rectified by to avoid a delay and take any steps.
- (d) **Force majeure delays.** If a Force Majeure Event occurs which may cause us to fail to perform one or more obligations by its applicable Due Date, we must, as soon as possible, notify you of the event, its impact on any Due Dates and what steps we will take to mitigate the impact of the event.
- (e) **Consequences of delay.** If we fail to perform an obligation by the applicable Due Date:
- (i) if that failure results from a Force Majeure Event or from a breach of this Agreement by you (including where we have exercised our right to suspend provision of the Services under clause 7.7(b) and where you have failed to provide us with required information under clause 5.2) (an **Extension Event**) then provided that we have complied with our obligations under sub-clauses (a) - (d), the Due Date for performing the obligation the subject of the failure will be extended by an amount of time that is reasonable in the circumstances. The extension will not apply to any other Due Dates unless agreed in writing by the parties; and
 - (ii) in all other circumstances, you may do any one or more of the following:
 - (A) in your discretion, extend the Due Date, provided that such extension shall not prejudice your other rights and remedies arising from the delay;
 - (B) require us to provide additional resources to accelerate delivery;
 - (C) where a Due Date has been extended on more than one occasion due to our fault, you may suspend payment under this Agreement until the obligation the subject of the failure has been rectified; and
 - (D) where a Due Date has been extended on two or more occasions due to our fault, you may issue a termination notice for the Agreement in whole or in part.

3.7 In delivery of the Services we may:

- (a) sub-contract some or all of the Services, with your prior written consent, provided that we remain responsible for final delivery of the Services and the Deliverables in all instances;

3.8 We may include technical measures in the Deliverables in order to enforce our rights under these Terms, including as described at clause 7.7.

4. Fees and Disbursements

- 4.1 We will charge you for our Services and Deliverables in accordance with the SOW.
- 4.2 The amounts we charge you will be based on the Services actually rendered, and these amounts may accordingly vary from any Estimate. If we are aware of any matter which may result in an increase of more than 5% to the total Estimate for the Deliverables to be provided in the relevant SOW, we will promptly notify you of such delay or additional cost and shall request an amendment to the total Estimate in accordance with clause 3.4 (change control). You will not be obliged to pay any Fees in excess of the total Estimated in the relevant SOW unless we have complied with clause 3.4 prior to undertaking the work to which the additional Fees apply.
- 4.3 We may alter our Fee Schedule at any time after 30 June 2023, and such changes will be applicable to any new Services requested by you. Where such change is made while we are currently undertaking any Services on your behalf, and would increase the associated cost of those Services, we will complete those Services in accordance with our Fee Schedule as it previously applied.
- 4.4 You agree to pay for any Disbursements incurred by us:
- (a) as set out in an Estimate, in accordance with clause 2.4; or
 - (b) that were authorised or directed by you.

5. Your obligations

- 5.1 You must provide us will all information, data, logos, graphics and text you require to be included in the Deliverables.
- 5.2 You agree to comply with your obligations in the applicable SOW and Acceptance Test Plan and to respond to reasonable requests from us for information and assistance.

6. Acceptance testing

- 6.1 The parties will agree an Acceptance Test Plan within the period specified in the SOW, or if no period is specified, within a reasonable period.
- 6.2 We will submit Deliverables to you for testing or re-testing (as applicable) within the period specified in the Acceptance Test Plan (or within 14 calendar days, if no period is specified in the Acceptance Test Plan) (**Test Period**). On receipt of Deliverables for testing or re-testing, you will test the relevant Deliverables in accordance with the agreed Acceptance Test Plan and notify us that:
- (a) you accept the Deliverables; or
 - (b) if the Deliverables fail to provide the functionality or meet the performance criteria set out in the relevant Specifications, you do not accept the relevant Deliverables. Any such notice must include a summary of the reasons for non-acceptance of the relevant Deliverables.

In the absence of notice from you under clause 6.2(b) during the Test Period, the Deliverables will be deemed to have been accepted by you.

- 6.3 If you do not accept any Deliverables under clause 6.2, then we must, at our cost, promptly modify, repair or replace the Deliverables and resubmit the same to you for testing, and the parties must repeat the procedure set out in clause 6.2 and this clause 6.3 until either:
- (a) the Deliverables are accepted; or
 - (b) you exercise your rights in accordance with clause 6.4.
- 6.4 If you are unable to accept any Deliverables after three or more rounds of testing, we are deemed to be in breach of this Agreement and you may, without prejudice to your other rights or remedies:
- (a) terminate the SOW to which the Deliverables relate and, if you so elect, any related SOWs intended to form part of the same solution that are affected by the failure of the Deliverables to pass acceptance testing, with immediate effect by providing written notice to us; or
 - (b) accept the Deliverables, subject to a reduction in the Fees which is equal to the diminished level of performance or functionality of the relevant Deliverables, as agreed in writing between the parties (acting reasonably).
- 6.5 We must supply you with all assistance reasonably requested by you in testing the Deliverables.
- 6.6 Acceptance by you with respect to any Deliverables indicates that the relevant Acceptance Test Plan has been successfully completed but is without prejudice to your other rights and remedies, including any rights you may have during the Warranty Period under clause 10.

7. Invoicing and payments

- 7.1 Unless the SOW otherwise provides:
- (a) the Deposit will be invoiced upon execution of the SOW, where applicable, or otherwise prior to commencement of the Services; and
 - (b) remaining fees will be invoiced for our work fortnightly in arrears.
- 7.2 Our invoices must include: (i) sufficient detail to enable you to identify and verify the Services and Deliverables provided by us during the applicable invoice period; (ii) where Fees are calculated based on time and materials rates, our invoice will include a weekly breakdown of work completed by role, time spent and applicable rate; (iii) such other information as may be specified in the SOW; (iv) any additional information which you may reasonably require; and (v) clearly identify any GST payable. You must pay each properly rendered tax invoice issued by us within 21 calendar days of the date of that invoice.
- 7.3 Each invoice issued by us must be paid in full, unless you dispute the invoice, in which case you must notify us prior to the due date that you dispute the invoice.
- 7.4 Without limiting your obligations under clause 7.3, where you dispute any portion of an invoice issued by us, you must pay the undisputed portion of the invoice in accordance with clause 7.2.
- 7.5 We may provide you with the ability to pay our invoices via credit card. Where we do so, we will notify you of the applicable credit card surcharge, being an amount we reasonably estimate to represent the total costs we incur from third parties to process

credit card payments. If you elect to pay any invoice via credit card, you must also pay us this credit card surcharge.

- 7.6 Without limiting any of our other rights under these Terms, if an invoice or any portion thereof is overdue and such amount is not subject to a bona fide dispute, we shall provide you with a written reminder and allow you a further 14 days to remedy the non-payment and notify you of our intention to exercise our rights under clause 7.7 in the event that you fail to make payment within the 14 days.
- 7.7 If you fail to pay a properly rendered invoice after having received a reminder notice and further 14 days to pay pursuant to clause 7.6, we may, until payment has been received in full:
- (a) charge you interest on any outstanding portion at the Commonwealth Bank of Australia's indicator rate plus 2% (on a per annum basis) from the date of default until we receive payment in full;
 - (b) suspend the delivery or performance of any Services;
 - (c) decline to provide you with Deliverables;
 - (d) decline to provide you with any codes, keys or similar information necessary to make the Deliverables operable; and/or
 - (e) take steps to render the Deliverables inoperable.

8. Our Intellectual Property

- 8.1 Unless expressly stated in the applicable SOW, on paying all of our associated invoices in full, we grant you a perpetual, non-exclusive, royalty free licence to use, reproduce, alter and modify:
- (a) the Developed Intellectual Property; and
 - (b) any Background Intellectual Property present in the Deliverables, solely for the purpose of using the Deliverables in the ordinary conduct of your business, unless otherwise expressly specified in the SOW or agreed in writing.
- 8.2 Subject to clause 8.5, we warrant to you that:
- (a) we have all necessary right and title to grant the licence set out in clause 8.1;
 - (b) at the date of delivery to you, the Deliverables are not, and do not contain any software or code which is:
 - (i) Open Source Software licensed on terms which may require you or us to license, sub-license, distribute, re-distribute or otherwise disclose or make available the source code materials of any such Deliverables to any third party; or
 - (ii) other software made freely available which are licensed on an express or implied licence which:
 - (A) requires you to make any payments;
 - (B) is terminable without your consent;
 - (C) imposes any material restrictions on the use or transfer of the Deliverable; or
 - (D) includes any provisions which may require you or us to license, sub-license, distribute, re-distribute or otherwise disclose or make available the source code materials of

any such Deliverables;

- (c) subject to 8.5, neither:
 - (i) the Deliverables, or the use or possession of the Deliverables in accordance with this Agreement; or
 - (ii) the supply of, or receipt of, the Services,
 will give rise to an IP Claim; and
- (d) to the extent that individuals are entitled to assert any Moral Rights in connection with a Deliverable, we have procured all necessary consents and waivers in writing authorising you to do any act or omit to act in any way relating to that Deliverable that would otherwise infringe that person's Moral Rights.

8.3 You retain ownership of all Client Intellectual Property and all Client Data and we retain ownership of all Background Intellectual Property, and all Developed Intellectual Property, including all Intellectual Property Rights in the Deliverables and all drafts, concepts and designs we create in performing the Services even if not used in the Deliverables.

8.4 Subject to clause 8.2, we may include third party materials in the Deliverables, including off-the-shelf or open source software components, provided always that we:

- (a) procure for you a licence to use these materials as necessary for you to use the Deliverables in accordance with clause 8.1; or
- (b) otherwise make arrangements by agreement with you for you to acquire the necessary licences to such materials.

8.5 We do not warrant that:

- (a) any Developed Intellectual Property created using any Client Intellectual Property will not infringe any third party Intellectual Property Rights, to the extent that such infringement arises solely from the inclusion of the Client Intellectual Property.

8.6 If any party brings a claim against you alleging our supply (including Deliverables and Services) infringes their intellectual property rights you agree to:

- (a) notify us in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
- (b) give us the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
- (c) provide us with reasonable assistance (at our cost) in conducting the defence of such a claim;
- (d) permit us to modify, alter or substitute the infringing part of the Deliverable, at our expense, to render the Deliverable non-infringing provided that the same does not cause any loss of functionality or performance; and
- (e) authorise us to procure for you the authority to continue the use of the Deliverable.

If we are unable to do or obtain the things specified in sub-clauses (d) or (e) we may direct that you cease using the relevant Deliverable and we will pay you compensation up to an amount not exceeding the amount you paid to us for that Deliverable.

8.7 We will at all times indemnify you and each of your officers, employees, representatives and agents (**those indemnified**) from and against any claims made against, or loss incurred by, any of those indemnified where such claim or loss arises out of, in connection with, or in respect of:

- (a) any of the warranties given by you under clause 8.2 being false, misleading or inaccurate; or
- (b) any claim or proceeding alleging that your use of any Deliverable or Service in accordance with these Terms constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**),

provided that the indemnity:

- (c) is subject to your compliance with clause 8.6;
- (d) does not apply to the extent that an IP Claim arises from or in connection with:
 - (i) your breach of these Terms;
 - (ii) the use of the Deliverable or Service in a manner or for a purpose not reasonably contemplated by these Terms or otherwise not authorised in writing by us; or
 - (iii) modification or alteration of the Deliverable or Service by a person other than us.

9. Your Intellectual Property

9.1 You grant to us a limited, non-exclusive, fee-free, royalty-free licence to access and use the Client Intellectual Property solely to the extent that such a licence is necessary for us to create the Developed Intellectual Property and provide the Services and the Deliverables in accordance with these Terms. We agree that we do not own any of the Client Intellectual Property and that it is owned by you and is your Confidential Information.

9.2 You warrant to us that:

- (a) you have all necessary right and title in the Client Intellectual Property in order to grant the licence at clause 9.1; and
- (b) our use of the Client Intellectual Property pursuant to the licence at clause 9.1 will not infringe the Intellectual Property Rights of any third party.

9.3 You will at all times indemnify and keep indemnified us, and each of our officers, employees, representatives and agents (those indemnified) from and against any claims made against, or loss incurred by, any of those indemnified where such claim or loss arises out of, in connection with, or in respect of:

- (a) any of the warranties given by you under clause 9.2 being false, misleading or inaccurate; or
- (b) any infringement of the Intellectual Property Rights of a third party arising from our use of the Client Intellectual Property in accordance with clause 9.1,

provided that the indemnity:

- (c) is subject to our compliance with clause 9.4;
- (d) does not apply to the extent that an indemnity claim arises from or in connection with:
 - (i) our breach of these Terms;

- (ii) our use of the Client Intellectual Property in a manner or for a purpose not reasonably contemplated by these Terms or otherwise not authorised in writing by you; or
- (iii) modification or alteration of the Client Intellectual Property by a person other us in accordance with your directions.

9.4 If any third party brings a claim against us alleging that our use of the Client Intellectual Property infringes their Intellectual Property Rights we agree to:

- (a) notify you in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
- (b) give you the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
- (c) provide you with reasonable assistance (at your cost) in conducting the defence of such a claim;
- (d) permit you to modify, alter or substitute the infringing part of the Client Intellectual Property at your expense, to render the Client Intellectual Property non-infringing; and
- (e) authorise you to procure for us the authority to continue the use of the Client Intellectual Property.

If you are unable to do or obtain the things specified in sub-clauses (d) or (e) you may direct that we cease using the relevant Client Intellectual Property.

10. Warranty

10.1 Subject to the remainder of this clause 10 and your payment of our associated invoices in accordance with clause 7, and in addition to any other rights you may have at law:

- (a) we warrant that each Deliverable we supply to you will be free from material Defects during the Warranty Period; and
- (b) we will attempt to rectify any material defects that you identify in a Deliverable during the Warranty Period, and ensure that, on the expiration of the relevant Warranty Period, the Deliverables will be free of all Critical Severity Defects raised by you during the Warranty Period (or if not free, then the Warranty Period shall be extended until all such Critical Severity Defects are rectified);
- (c) we warrant that Services and Deliverables provided under this agreement shall:
 - (i) meet the relevant Specifications;
 - (ii) be fit for any purposes specified in the SOW;
 - (iii) be performed with due care, skill and diligence, in a professional manner by qualified professional personnel;
 - (iv) be performed in a timely manner to meet any Due Dates specified in the SOW; and
 - (v) be supplied in accordance with Good Industry Practice and all applicable laws.

10.2 The express warranty set out at clause 10.1 does not extend to:

- (a) any issue which is not a material Defect in the Deliverable;

- (b) any issue identified outside of the Warranty Period;
- (c) any issue arising by virtue of any matter outside of our control, including any issue caused by:
 - (i) the hardware on which the Deliverable is used; or
 - (ii) any third party software or services used in relation to the Deliverable, except to the extent that the Specifications require the Deliverable to operate and/or integrate with the relevant hardware or third party software;
- (d) the provision of support in the use of the Deliverable; or
- (e) the provision of maintenance of the Deliverable.

11. Confidential information

- 11.1 Each party must keep the Confidential Information of the other secret and confidential, and must not use or disclose such Confidential Information for any purpose other than to the extent strictly necessary for it to perform its obligations under these Terms.
- 11.2 The obligations of confidence under this agreement do not apply to any information that:
 - (a) is in the public domain (other than through any breach of this agreement);
 - (b) a party (**Recipient**) can prove was known to it at the time of disclosure by the other, free from any obligation of confidence; or
 - (c) the Recipient is required by law to disclose.
- 11.3 The obligations of confidentiality under these Terms survive the expiration or termination of the Terms and your engagement with us.
- 11.4 A party may disclose the Confidential Information of the other to those of its staff, representatives or professional advisers who need to know the information to enable the party to properly perform its obligations under these Terms and who are aware of the confidential nature of the information.
- 11.5 On written notice from the other party (**Discloser**), the recipient of Confidential Information (**Recipient**) must immediately destroy or deliver to the Discloser all Confidential Information in a recorded form (including any copies of that information) which is in the possession or control of the Recipient or its representatives.
- 11.6 Neither party may make any public statement or communication or make any representation in relation to this agreement or any part of it, or in relation to the other party, or any representative or customer of the other party, without the prior written consent of that party unless the statement, communication or representation is required to be made:
 - (a) by law; or
 - (b) pursuant to any order of a court, tribunal or government or regulatory body,

authority or agency.

- 11.7 You acknowledge and agree that, notwithstanding anything in this clause 11, we may refer to you publicly as one of our clients.

12. Privacy

- 12.1 Where you provide us with, or with access to, any personal information in the course of the Services or development of the Deliverables (**Personal Information**):
- (a) we will:
- (i) only use or disclose such Personal Information:
- (A) as necessary to provide you with the Services and Deliverables;
- (B) as otherwise directed by you; or
- (C) as permitted by law;
- (ii) not use or disclose any such Personal Information for the purpose of direct marketing (except where directed by you); and
- (iii) take such steps (if any) as are reasonable in the circumstances to protect any such Personal Information we hold:
- (A) from misuse, interference and loss; and
- (B) from unauthorised access, modification or disclosure; and
- (b) you warrant that, under applicable laws:
- (i) you are entitled to disclose such Personal Information to us;
- (ii) we are entitled to collect such Personal Information; and
- (iii) we are entitled to use and disclose such Personal Information in accordance with clause 12.1(a)(i).
- 12.2 **Transfer outside Australia.** We will not transfer Client Data or Personal Information outside Australia without your prior written consent. Where you consent to the transfer of Client Data or Personal Information outside Australia, we will ensure that the Client Data and Personal Information once transferred will be given the same level of protection as required under this Agreement.
- 12.3 **Data breach.** If we become aware or suspect that: (a) we or any of our employees, contractors or agents (or any of their respective personnel) is using or disclosing, or has used or disclosed, Personal Information in contravention of this clause 12 (**Data Contravention**); (b) there has been unauthorised access to, or unauthorised disclosure of, Client Data or Personal Information (**Data Breach**); or (c) Client Data or Personal Information has been lost (**Loss of Data**), then we will immediately notify you of the relevant contravention, breach or loss and cooperate with you in investigating the contravention, breach or loss, including by providing you with access to and copies of relevant records and information, as requested by you.
- 12.4 **Data breach notification.** we agree that: (i) subject to clause 12.5 and our obligations at law, you will be solely responsible for determining whether a Data Contravention, Data Breach or Loss of Data results in a real risk of serious harm to any of the individuals to whom the Personal Information relates; (ii) we must co-operate with you to assist it in

making the determination; and (iii) we must not disclose to any third party the existence or circumstances surrounding the contravention, breach or loss without your prior written approval.

- 12.5 If we determine that we are legally obliged to report the relevant contravention, breach or loss to the Commissioner (as defined in the Privacy Act 1988 (Cth)) and/or persons impacted by the breach, we will first: (i) provide you with a copy of the proposed notification; and (ii) reasonably consider any comments and proposed amendments to the notification requested by you.

13. Liability

- 13.1 To the extent permitted by law, and subject to clause 10, neither party is liable for any loss, damage or cost that is indirect or consequential, including any loss of profits or revenue, suffered or incurred by the other party, however caused or arising (including, without limitation, under contract, tort (including negligence), under statute or any other basis in law or equity).
- 13.2 To the full extent allowed by applicable law and subject to clause 13.3, each party's total liability to the other for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to this agreement from any cause or causes of action including but not limited to negligence, strict liability, breach of contract or breach of warranty shall not exceed the amount of the Fees paid by you to us under this Agreement during the previous 12 month period in which such claim arises. This Clause shall not apply to liability for (i) our indemnity obligations under clause 8.7 and your indemnity obligations under clause 9.3; (ii) fraud, gross negligence or willful misconduct, (iii) death or personal injury; (iv) damage to, or loss of, tangible property; or (v) breach of the confidentiality and privacy provisions or (vi) your obligation to pay Fees to us.
- 13.3 Subject to clause 10, our liability for:
- (a) breach of any warranty under this agreement in relation to the supply of goods and services, including those which are implied into this agreement; or
 - (b) breach of a guarantee conferred by the Australian Consumer Law (under the *Competition and Consumer Act 2010* (Cth)),
- that cannot lawfully be excluded is limited to the following:
- (c) In the case of goods (including the Deliverables), to:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
 - (d) In the case of services (including the Services), to:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

14. Goods and Services Tax (GST)

- 14.1 Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.
- 14.2 Unless otherwise stated, any amount specified in these Terms, our Fee Schedule or a Estimate or SOW as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 14.3 If we make a taxable supply to you under these Terms, then you must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 14.4 We will provide you with a valid tax invoice for any taxable supply.
- 14.5 If an adjustment event arises in relation to a taxable supply made by us under these Terms, the amount paid or payable by you pursuant to clause 14.3 will be amended to reflect this and a payment will be made by you to us or vice versa as the case may be.
- 14.6 If a third party makes a taxable supply and these Terms requires a party to these Terms (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
- 14.7 This clause does not merge on completion and will continue to apply after expiration or termination of these Terms.

15. Termination

- 15.1 Either party may terminate the provision of Services and any Deliverables under these Terms, with immediate effect, by providing notice in writing to the other where:
- (a) the other party becomes insolvent or is the subject of a proceeding in bankruptcy, is placed in receivership, or enters into an arrangement for the benefit of its creditors; or
 - (b) the other party commits a material breach of any of its obligations (including any payment obligation) under these Terms and that breach has not been remedied within 30 calendar days of notice.
- 15.2 You may, at any time, terminate this Agreement (in whole or in part) for your convenience and without liability by providing 30 days written notice. We shall be entitled to receive payment in accordance with clause 15.5 and the greater of \$10,000 or 20% of our Estimate for the remaining Services which have not been performed at the termination date but shall not be entitled to any additional compensation for termination of this agreement for your convenience.
- 15.3 You may terminate this agreement immediately by written notice to us if we are subject to a change of Control and in your reasonable opinion, the change is materially detrimental to you.
- 15.4 The parties may also, by written agreement, mutually resolve to terminate the provision of

Services under these Terms.

- 15.5 Upon termination under clause 15:
- (a) we will cease to provide you with the Services;
 - (b) we will invoice you, and you will pay (except where the Services are terminated on the basis of breach of these Terms by us), for all Services provided up until the date of termination;
 - (c) we will not refund any amounts paid by you, except where the Services are terminated on the basis of breach of these Terms by us; and
 - (d) except where the Services are terminated on the basis of breach of these Terms by you, we will provide you with the Deliverables as they existed at the date of termination. You agree that these may not be complete, and may be in a non-functional state.
- 15.6 Termination does not affect any of your or our rights or remedies existing before termination or arising from termination.
- 15.7 Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination or expiry of these Terms, the following Clauses survive the termination or expiry of these Terms:
- (a) clause 2.4;
 - (b) clause 7;
 - (c) clauses 8, 9, 10, 11, 12, 13 and 14;
 - (d) clauses 15.5, 15.6 and 15.7; and
 - (e) clauses 16, 17, 18 and 19.

16. Security

- 16.1 Notwithstanding anything to the contrary hereunder, we warrant that the Deliverables will not contain any coding, time bomb or back door that would enable us to disable the code for any reason, with the exception of a security key.
- 16.2 We warrant that we will take reasonable steps to test any software and/or media supplied by us or used by us in the performance of this Agreement for Computer Viruses. Based upon such testing, we warrant and represent that, to the best of our knowledge, such software and media is free from any Computer Virus at the time it is provided to you. "**Computer Virus**" is defined as malicious code attached to or a section of code hidden within the software or media that performs a function unauthorised by the software's documentation and which is designed to adversely affect the computer or software systems of any user of the Deliverable.
- 16.3 In providing the Services and Deliverables, we will:
- (a) not access or attempt to access any of your systems without your prior written consent;
 - (b) not disclose any passwords supplied by you to any person other than our employees, subcontractors and agents who have a strict need-to-know;
 - (c) not knowingly introduce any Computer Virus into the Services or Deliverables or

any of your systems; and

- (d) ensure that we have and maintains in place on our systems appropriate and up to date anti-malware and malicious code measures in accordance with Good Industry Practice.
- 16.4 If any Computer Virus is introduced into the Services or Deliverables or any of your systems by us or any of our employees, contractors or agents or as a result of our negligence or breach of our obligations under this Agreement then we will (without prejudice to your other rights and remedies), use our reasonable endeavours at our own expense to assist you in minimising the effects of the Computer Virus and if the Computer Virus causes a loss of operational efficiency or loss of data, to assist you to mitigate the effects of the Computer Virus and to restore such losses.
- 16.5 We warrant that we operate an effective system of security management consistent with Good Industry Practice.
- 16.6 In the event that we undertake a security audit or penetration testing, we will provide you with a summary of the results of our annual security audit and/or penetration test. We reserve the right to limit the disclosure of details in such report to the extent it deems necessary to protect the integrity and confidentiality of the security related to our systems.

17. Insurance

- 17.1 We shall take out and maintain the following insurance policies for the duration of this Agreement and for six years thereafter:
- (a) public and products liability insurance of \$20m per event;
 - (b) professional indemnity insurance of \$10m per event;
 - (c) cyber risk insurance of \$1m per event; and
 - (d) workers' compensation insurance as required by law.

18. Dispute Resolution

- 18.1 Neither party shall commence any court or arbitration proceedings to resolve a dispute under this Agreement (**Dispute**) unless the parties have complied with this clause. A party claiming a Dispute has arisen must give written notice (**Notice**) to the other party specifying the nature of the Dispute. Within 7 days of receipt of the Notice (or such further period as agreed in writing by them) senior management of each party shall meet to discuss the Dispute and seek resolution. If a resolution is not reached within 7 days of such meeting, the parties shall, within 30 days of receipt of the Notice (or such further period agreed in writing by them), mediate the Dispute in accordance with mediation administered by the Australian Disputes Centre. Nothing in this clause shall prevent a party from seeking urgent interlocutory or equitable relief before an appropriate court.

19. General

- 19.1 The parties to this agreement are independent contractors. Nothing in this agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties.
- 19.2 Neither party will be liable for delay or failure to perform any of its obligations under these Terms to the extent that such delay or failure is caused by a Force Majeure Event; but each party shall use all reasonable efforts to minimise the extent of any such delay. If a Force Majeure Event materially affecting the delivery or receipt of Services or Deliverables is ongoing for more than 45 days, you may terminate this Agreement on written notice to us and if ongoing for more than 90 days, we may terminate this Agreement on written notice to you.

- 19.3 Neither party may assign any of its rights under these Terms without the prior written consent of the other.
- 19.4 A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver. Such waiver is only effective in relation to the particular instance in respect of which it is given, and does not preclude that party from exercising any other right. A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- 19.5 If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.
- 19.6 Each party:
- (a) agrees that these Terms are governed by and is to be construed under the laws in force in New South Wales;
 - (b) submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement; and
 - (c) irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 19.7 Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to these Terms and the transactions contemplated by them.

19.8 These Terms state all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter. If there is any conflict or inconsistency between the Term and any SOW, these Terms shall prevail to the extent necessary to resolve the inconsistency or conflict.

20. Definitions and interpretation clauses

20.1 Definitions

In these Terms:

Acceptance Test Plan	means a plan agreed by the parties in writing for testing whether the Deliverables satisfy the relevant Specifications and are free from Defects; the plan will address the manner and timing for testing, the parties' respective responsibilities for providing personnel, materials and facilities for the acceptance tests, and the criteria against which the Deliverable will be tested.
Background Intellectual Property	means all Intellectual Property Rights that are acquired, created or owned by us or licensed to us for use by a third party prior to the commencement of these Terms, or developed by us outside the scope of our obligations under these Terms.
Client Data	means all data and information (including Confidential Information) relating to you and your operations, facilities, personnel, assets, products, sales and transactions in whatever form whether provided to us or entered, stored, generated or processed as part of the Services or Deliverables, and includes: (a) a database in which such data or information is stored; and (b) documentation or records related to such data or information.
Client Intellectual Property	means all Intellectual Property Rights associated with any materials you provide to us under these Terms, including any materials you provide to us for inclusion in the Deliverables.
Confidential Information	means any information in any form disclosed by a party (Discloser) to the other (Recipient) or acquired by the Recipient from the Discloser, whether deliberately or inadvertently and regardless of whether or not marked confidential, including: any information passing from the personnel or representatives of the Discloser; any information relating to this agreement, its subject matter, any negotiations or transactions contemplated or provided for in this agreement; and any information regarding the previous, current or future business interests, operations or affairs of the Discloser or any of its existing or future related entities or of any person or entity with which that party may deal or be concerned, but excluding any information that the Recipient can establish: is in the public domain other than through disclosure in breach of this agreement; is independently developed by the Recipient; or is received by the Recipient from a third party who is not bound by obligations of confidence in relation to the information. Our Fee Schedule and all Estimates are our Confidential Information.

Control	has the meaning given in section 50AA of the Corporations Act.
Defect	means any defect, fault, error or omission in the Services or Deliverables or any aspect of the Services or Deliverables, which is not in accordance with the requirements of this Agreement, including any failure of the Services or Deliverables to meet the Specifications.
Deliverable	means any software, materials or other works developed by us for you as part of the Services.
Deposit	means: the deposit specified in a Estimate; the deposit agreed between the parties in writing; or in the absence of (a) or (b), fifty per cent (50%) of the total fees listed in a Estimate, or otherwise anticipated by us for Services in the absence of an applicable Estimate.
Developed Intellectual Property	means all Intellectual Property Rights acquired, created or otherwise developed by us in the provision of the Services, and excludes any Background Intellectual Property.
Disbursement	means all purchases and costs incurred by us on your behalf when contracting a third party to carry out work or provide goods or services as part of the Services.
Due Date	means a date or time specified in this agreement (including any SOW or Project Plan) by or on which an obligation must be performed, as extended in accordance with the terms of this agreement
Estimate	means a written estimate for the provision of Services and/or Deliverables issued by us.
Fee Schedule	means our standard schedule of fees as updated and revised from time to time.
Force Majeure Event	means any circumstance not within the direct or reasonable control of a party, including labour disputes (other than those limited to a party's own workforce), pandemic or epidemic, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, the weather or other natural events and which it could not have prevented by reasonable precautions, provided that the COVID-19 Virus will not be considered a force majeure event unless a COVID-19 Qualifying Event arises from it, and for the purposes of this definition: (a) COVID-19 Qualifying Event means circumstance beyond a party's reasonable control arising as a result of the COVID-19 Virus, including unavailability of key personnel suffering from or in quarantine due to the COVID-19 Virus and reasonable actions required in accordance with regulations, restrictions or orders of a governmental authority; and (b) COVID-19 Virus means the virus known as COVID-19 and its variants and derivative strains.
Intellectual Property Rights	includes all rights throughout the world in relation to patents, copyright (including moral rights), designs, registered and unregistered trade marks, trade secrets, know-how, Confidential Information and all other intellectual property and any right to register those rights, whether created before or after the date of these Terms, and in all cases for the duration of those rights and any renewal.
Good Industry Practice	means the exercise of the skill, diligence, foresight and judgment which would be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, applying the standards currently generally

	applied in our industry by organisations of similar size to or with similar resources as us.
IP Claim	has the meaning given to that term in clause 8.7(b).
Key Personnel	means our personnel identified as key personnel in a SOW.
Milestone	means any milestone specified in the applicable SOW relating to the supply of one or more Deliverables.
Moral Rights	means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the Copyright Act 1968 (Cth), and if the works are used in any jurisdiction other than Australia, any similar right capable of protection under the Laws of that jurisdiction.
Open Source Software	means 'open source software' which complies with the 'Open Source Definition' provided by the 'Open Source Initiative' at https://opensource.org/osd
Personal Information	has the meaning given in the <i>Privacy Act 1988</i> (Cth).
Services	means services and Deliverables provided by us to you under these Terms, including (as applicable) software and website development and modifications, graphic design services, and branding services, as specified in a SOW.
Specifications	means, in relation to any Services or Deliverables, the functional and non-functional requirements and performance specifications for the Services or Deliverables as set out or referred to in this agreement and any applicable SOW.
Statement of Work or SOW	means any document executed by both parties that describes any Services and Deliverables to be supplied by us to you under this agreement. The document can be in a form such as a quote, proposal, project scope agreement, statement of work, engagement letter.
Terms	means the terms and conditions set out in this document.
Warranty Period	in respect of any Deliverable means 60 calendar days following the deployment of that Deliverable to a production environment.
We or Us	means Agend Systems Pty Ltd (ACN 666 566 365).

Executed as an agreement:

Executed by Agend Systems Pty Ltd ACN 666 566 365

Signature

Position

Full name (print)

Executed by ACN

Signature

Position

Full name (print)