SOFTWARE LICENCE AGREEMENT

**DATE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PARTIES

1. **Agend Systems Pty Ltd**, ABN 23 666 566 365 (**Licensor**)
2. **\_THE CLIENT\_**, ABN 97 008 485 809 (**Licensee**)

SECTION A: AGREEMENT AND KEY DETAILS AGREEMENT

The Licensor agrees to license the Software to the Licensee on the terms of the Agreement. The Agreement comprises:

**▲** Section A (Agreement and Key Details), including this cover page and the signature clauses; and

**▲** Section B (General Terms, including the Schedule);

**▲** Section C (Incorporated Terms), being those terms of the Software Development Agreement which are incorporated into this Agreement by reference.

KEY DETAILS

Item Detail

**Software** Agend Membership Management System.

**Approved Purpose** The Licensee may use the Software solely for the Licensee’s lawful internal business purposes.

**Start Date** Project start date as per agreed project plan

**End Date** Three (3) year anniversary of Start Date

**Fees and Payment Terms**

**Agend Licences**

|  |  |  |
| --- | --- | --- |
| **Agend Module** | **Fees** | **Frequency** |
| Membership/Event Suite | $7,200 | Annually |
| Education | $3,120 | Annually |
| Content Personalisation | $3,840 | Annually |
| Finance Suite | $3,120 | Annually |
| **Total** | **$17,280** | **Annually** |

(All costs above are ex GST)

**Territory** Australia

**Warranty Period** 60 days from the Start Date.

SIGNED

#### EXECUTED AS AN AGREEMENT ON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date)

**Signed** for and on behalf of )
**Agend Systems Pty Ltd** )
**ABN 23 666 566 365** )
by its authorised representative: )

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Authorised Representative |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Title |

**Signed** for and on behalf of )
**\_THE CLIENT\_** ) **ABN 97 008 485 809** )
by its authorised representative: )

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Authorised Representative |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Title |

SECTION B: GENERAL TERMS

1. INTERPRETATION
	1. **Definitions:** In the Agreement, the following terms have the stated meaning:

Term Meaning

 **Agreement** Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms, including the Schedule) and Section C (Incorporated Terms).

 **Approved Purpose** the approved purpose set out in the Key Details.

**Confidential Information**

**Control**

**Documentation**

**End Date

Fees**

**Intellectual Property Rights**

the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. The Licensor’s Confidential Information includes the Software and the Documentation. The Licensee’s Confidential Information includes all data and information whether or not relating to Licensee and/or its operations, facilities, personnel, members, customers, assets, products, services, sales and/or transactions, in whatever form that is entered, stored, generated or processed as part of the Software (**Licensee Data**). Other than in respect of Licensee Data, Confidential Information does not include information which is developed by the recipient independently of any information disclosed to it by the disclosing party, on receipt by the recipient, publicly available or which subsequently becomes publicly available without any breach of this Agreement; or on receipt by the recipient, already known by or in the possession of the recipient and which independent development, knowledge or possession can be proven by written contemporaneous records.

Has the meaning given in the Corporations Act 2001 (Cth) and **Change of Control** has a corresponding meaning.

documentation designed to enable the Licensee to properly use and operate the Software (if any), and includes any update of the documentation

the end date set out in the Key Details.

the fees set out in the Key Details.

all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under Article 2 of the Convention Establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

Term Meaning

**Key Details** the Agreement specific details set out in Section A of the

Agreement.

**Licensee IP** any of the Licensee’s Intellectual Property Rights, including any retained intellectual property set out under clause 6.

**Payment Terms** the payment terms set out in the Key Details (if any).

**Schedule** the Schedule provided in Section B of the Agreement.

**Software** the software set out in the Key Details, including any Update.

**SOW Commencement** the date specified in a Statement of Work as the

**Date** commencement date.

**Start Date** the start date set out in the Key Details.

**Statement of Work** a statement of the work entered into by the parties from time to time,

and incorporating the terms of this Agreement.

**Support Services** the support services described in the Schedule

**Territory** the territory set out in the Key Details.

**Term** the term of this Agreement, being the period from the Start Date to the End Date, and any renewal.

**Update** a new version of the existing Software released to the Licensee by the Licensor and intended to provide bug fixes and resolve other technical issues without providing new features or additional functionality and as indicated by a change in the numeral suffix of the product code.

**Warranty Period** the period set out in the Key Details.

**Year** a 12 month period commencing on the Start Date or any anniversary of the Start Date.

* 1. **Interpretation:** In the Agreement:
1. clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
2. words in the singular include the plural and vice versa; c a reference to:
	1. a **party** to the Agreement includes that party’s permitted assigns;
	2. **personnel** includes officers, employees, contractors and agents, but a reference to the Licensee’s personnel does not include the Licensor;
	3. a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
	4. **including** and similar words do not imply any limit; and
	5. a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
3. no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and
4. if there is any conflict between:
	* Section C
	* Section B
	* Section A of the Agreement,
5. the section higher in the list prevails unless expressly stated otherwise in Section A.
6. LICENCE

The Licensor grants to the Licensee, and the Licensee accepts, a non-exclusive and non- transferable licence for the duration of the Agreement to use the Software and the Documentation solely for the Approved Purpose within the Territory and on the terms and conditions of the Agreement.

1. LICENCE CONDITIONS
	1. **Conditions:** The Licensee must:
		1. use the Software and the Documentation for lawful purposes only and must not copy (except making a single copy for the Licensee’s own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-license or otherwise deal in the Software or the Documentation except:
			1. as expressly provided for in the Agreement; or
			2. to the extent expressly permitted by any law or treaty that is in force in the Territory where that law or treaty cannot be excluded, restricted or modified by the Agreement,

however, the Licensee shall be entitled to make a copy of any Licensee Data;

* + 1. ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
		2. maintain all proprietary notices on the Software and the Documentation;
		3. not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or the Licensee’s rights under the Agreement;
		4. not challenge the Licensor’s ownership, or the validity, of the Software, the Documentation or any other item or material created or developed by or on behalf of the Licensor under or in connection with the Agreement (including the Intellectual Property Rights in those items); and
		5. notify the Licensor in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.
1. SUPPORT SERVICES

The Licensor must provide the Licensee with the Support Services in accordance with the Schedule, provided the Licensee has:

1. paid all Fees due (except disputed Fees);
2. maintained a proper operating environment for the use of the Software in accordance with any guidance from the Licensor, including in the Documentation; and
3. complied with the Agreement and the Documentation.
4. FEES
	1. **Fees:** The Licensee must pay the Fees to the Licensor for the Software licence under the Agreement and for the provision of the Support Services. The Provider may increase such Fees with effect from each anniversary of the Start Date by not more than 4% on the occasion of each such increase.

## Invoicing and payment:

1. The Licensor must provide the Licensee with valid GST tax invoices on the dates set out in the Payment Terms period.
2. The Fees exclude GST, which the Licensee must pay on taxable supplies under the Agreement.
3. The Licensee must pay the Fees:
	1. on the dates set out in the Payment Terms, or if there are none, within 30 days of the Licensee’s receipt of a valid tax invoice; and
	2. electronically in cleared funds without any set off or deduction except to the extent required by law. If the Licensee is required by law to make any deduction, the Licensee must pay the Licensor any additional amount that is necessary to ensure receipt by the Licensor of the full amount which the Licensor would have received but for the deduction.
	3. **Overdue amounts:** The Licensor may charge interest on any undisputed overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by the Licensor’s primary trading bank as at the due date (or if the Licensor’s primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.
4. INTELLECTUAL PROPERTY
	1. **Retained Intellectual Property:** Subject to clauses 6.2 and 6.3, the following Intellectual Property Rights remains the property of the current owner:
5. Intellectual Property Rights that existed prior to the Start Date; and
6. Intellectual Property Rights that were or are developed independently of the Agreement.
	1. **Software and related IP:** From the date of creation or development of the Software, the Licensor owns all Intellectual Property Rights in:
7. the Software and the Documentation; and
8. any other item or material created, developed or provided by or on behalf of the Licensor under or in connection with the Agreement .
	1. **Feedback:** If the Licensee provides the Licensor with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):
9. all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by the Licensor; and
10. the Licensor may use or disclose any feedback for any purpose.

## Licensee’s IP: the Licensee owns all Intellectual Property Rights in:

1. all Licensee’s information, systems, software and resources such as workspaces and network access;
2. content, data and files (including Licensee’s end user data, user account information and configuration data) that is loaded or entered or incorporated into the Software or otherwise provided by or on behalf of Licensee or any Licensee’s end user, and any data or output derived therefrom including any logs, statistics and reports; and
3. Licensee Data,

and Licensee grants to Licensor for the duration of this Agreement and any Statement Of Work an irrevocable, non-exclusive, royalty-free licence to use, adapt and reproduce the Licensee IP disclosed to Licensor but only for the purpose of performing its obligations under this Agreement.

## IP indemnity:

1. The Licensor indemnifies the Licensee against any loss, damage, cost, expense, claim or proceeding brought against the Licensee in the Territory to the extent that loss, damage, cost, expense, claim or proceeding alleges or arises from an allegation that the Licensee’s use of the Software and/or Documentation in accordance with the Agreement constitutes an infringement of a third party’s Intellectual Property Rights (**IP Claim**). The indemnity is subject to the Licensee:
	1. promptly notifying the Licensor in writing of any IP Claim;
	2. making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the Licensor’s prior written consent; and
	3. giving the Licensor complete authority and information required for the Licensor to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the Licensor’s account.
2. The indemnity in clause 6.4a does not apply to the extent that an IP Claim arises from or in connection with:
3. the Licensee’s breach of the Agreement;
4. the use of the Software in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by the Licensor;
5. any Client Data; or
6. modification or alteration of the Software by a person other than the Licensor or a person authorised by the Licensor.
7. If at any time an IP Claim is made, or in the Licensor’s reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, the Licensor may (at the Licensor’s option):
8. obtain for the Licensee the right to continue using the items that are the subject of the IP Claim; or
9. modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.
10. [NOT USED]
11. WARRANTIES
	1. **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.
	2. **Licensor warranties:** The Licensor warrants that:
12. to the best of its knowledge, the use of the Software by the Licensee in accordance with the Agreement will not infringe the Intellectual Property Rights of any other person; and
13. during the Warranty Period, the Software will remain free of harmful code and viruses, and will materially perform in conformity with the Documentation although the Licensee acknowledges that the Software is of a technical nature and may not be error-free or bug-free;
14. the Support Services will be performed with due care, skill and diligence in a professional manner by qualified personnel and in accordance with Good Industry Practice and all applicable laws;
15. it has, and throughout the duration of the Agreement and any Statement of Work will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Software and Documentation, and grant and perform all rights and licenses granted or required to be granted by it under this Agreement and any Statement of Work
	1. **Breach of warranty:** Subject to clause 8.4, if the Software does not meet the warranty in clause 8.2b, the Licensor must, at its option and cost, remedy, repair, enhance or replace the defective item so that the Software meets and satisfies that warranty. The remedy, repair, enhancement or replacement of a defective item as described in this clause will be the Licensee’s sole remedy against the Licensor for a breach of warranty under clause 8.2b unless the Licensor fails to appropriately remedy, repair, enhance or replace the defective item within 30 calendar days of being notified of that defect.
	2. **Exclusion of warranty cover:** The Licensor is not obliged to remedy, repair, enhance or replace any defective item under clause 8.3 to the extent that the defect arises from or in connection with:
16. modification or alteration of the Software by any person other than the Licensor or a person authorised by the Licensor; or
17. a breach of the Agreement by the Licensee, including use of the Software by the Licensee or its personnel in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised in writing by the Licensor.
	1. **No implied warranties:** To the maximum extent permitted by law:
18. the Licensor’s warranties are limited to those set out in the Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to
	* in the case of goods:
		+ the replacement of the goods or the supply of equivalent goods;
		+ the repair of the goods;
		+ the payment of the cost of replacing the goods or of acquiring equivalent goods; or
		+ the payment of the cost of having the goods repaired; or
	* in the case of services:
		+ the supplying of the services again; or
		+ the payment of the cost of having the services supplied again; and
		1. the Licensor does not promise that the Software will be error-free, bug-free, or will operate without interruption.
19. LIABILITY
	1. **Maximum liability:** The maximum aggregate liability of each party to the other under or in connection with the Agreement or relating to the Software or the Support Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the Fees paid by the Licensee under the Agreement in the previous Year (which in the first Year is deemed to be the total Fees paid and payable by the Licensee for a period of 12 months from the Start Date*)*.
	2. **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement for any:
20. loss of profit, revenue, savings, business, and/or goodwill; or
21. consequential, indirect, incidental or special damage or loss of any kind.

## Unlimited liability:

1. Clauses 9.1 and 9.2 do not apply to limit the Licensor’s liability: i under the indemnity in clause 6.5a; or

ii under or in connection with the Agreement for:

▲ personal injury or death;

▲ fraud or willful misconduct; or

▲ a breach of Section C: Clause 11 (Confidential Information), Clause 12 (Privacy) or Clause 16 (Security).

1. Clauses 9.1 and 9.2 does not apply to limit:

i the Licensee’s liability to pay the Fees; or

ii a party’s liability under or in connection with the Agreement for:

▲ breach of clause 2 or 3;

▲ those matters stated in clause 9.3aii; or

▲ a breach of Section C: Clause 11 (Confidential Information).

* 1. **No liability for other’s failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.
	2. **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost, or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.
1. TERM AND TERMINATION
	1. **Duration:** Unless terminated under this clause 10, the Agreement: a starts on the Start Date and ends on the End Date; but

b where there is no End Date, continues for successive terms of 12 months from the Start Date unless a party gives at least 60 days’ notice that the Agreement will terminate on the expiry of the then-current term, provided that the Licensor shall only be entitled to exercise this right after 60 months from the Start Date.

## Termination rights:

1. Either party may, by notice to the other party, immediately terminate the Agreement or any Statement of Work if the other party:
	1. Breaches any material provision of the Agreement, or in the case of a Statement of Work, any material provision of that Statement of Work and the breach is not:

▲ remedied within 10 days of the other party notifying it of the breach; or

▲ capable of being remedied;

* 1. becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee’s or chargee’s agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
1. The Licensor may, by notice to the Licensee, immediately terminate the Agreement if:
2. the remedies in clause 6.4c are exhausted without remedying or settling the IP Claim, provided that in such circumstances, the Licensor shall, at its cost, assist the Licensee to transition to a replacement software product; or
3. the Licensee fails to install an Update in accordance with section 4 of the Schedule.
4. The Licensee may terminate this agreement or any Statement of Work immediately by written notice to the Licensor if the Licensor is subject to a Change of Control or if the Software Development Agreement is terminated.

## Consequences of termination or expiry:

1. Termination or expiry of the Agreement does not affect either party’s rights and obligations accrued before that termination or expiry.
2. On termination or expiry of the Agreement, the Licensee must pay all Fees for the rights and services provided prior to that termination or expiry.
3. Each party must, at the other party’s request following the termination or expiry of the Agreement, return to the other party or destroy all Confidential Information of the other party (including, in the case of the Licensee, the Software and Documentation) in the first party’s possession or control.
	1. **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 6, 9, 10.3, 10.4 and 12, continue in force.
4. [NOT USED]
5. GENERAL

## No assignment:

1. A party may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of the other party, that consent not to be unreasonably withheld. The Licensee remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
2. Any Change of Control of a party is deemed to be an assignment for which the other party’s prior written consent is required under clause [12.1](#Ref99974197)[a](#Ref99974182).
	1. **Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and emailing a counterpart copy to the other party.
	2. **No relationship:** Nothing in this Agreement constitutes a partnership or joint venture between the parties or makes a party the agent of the other party for any purpose.
	3. **Governing Jurisdiction:** This Agreement and all Statements of Work are governed by the law in force in New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of any claim concerning this Agreement or a Statement of Work.

## Confidential

SCHEDULE

## Support Services

The Schedule sets out the terms on which the Licensor will provide Support Services to the Licensee for the duration of the Agreement.

1. For so long as the Licensee pays all undisputed Fees, and subject to the conditions in sections 3 and 4 of the Schedule, the Licensor must perform the Support Services.
2. Where the Licensee considers on reasonable grounds that the Software is not materially performing in conformity with the Documentation, the Licensor must:
	1. provide telephone and email support in the form of consultation, assistance and advice; and
	2. use reasonable efforts to assist in the resolution of the issue (taking into account the nature and severity of the issue).
3. The provision of support by the Licensor under section 2 of the Schedule is conditional on the Licensee:
4. first using reasonable efforts to resolve the issue by referring to the Documentation; and
5. contacting the Licensor during its business hours (Monday to Friday from 9:00am to 5:00pm excluding public holidays in South Australia) via one of the following methods:

**Telephone:** (08) 7120 8880

**Email:** ticket@agend.com.au

1. The Licensor may, at its discretion, from time to time provide the Licensee with Updates, in which case the terms set out below will apply.
2. Where the Licensor provides an Update, the Licensee must promptly install the Update.
3. Without limiting clause 10.2bii, if the Licensee fails to install the Update, the Licensor may, at its option:
	1. cease providing the Support Services; or
	2. increase the Fees with immediate effect by an amount the Licensor considers reasonable to cover any additional cost of the Licensor continuing to provide the Support Services, such an amount to be approved in writing by the Licensee.

Nothing in the Agreement requires the Licensor to provide Support Services where the support is required as a result of a circumstance described in clause 8.4a or 8.4b.

**SECTION C: INCORPORATED TERMS**

On or about the date of this Agreement, the Licensor and Licensee entered into the ‘Website and Software Development Terms’ (Software Development Agreement).

1. The parties agree that the following clauses of the Software Development Agreement are incorporated into and form part of this Agreement:
	1. Clause 11 (Confidential Information);
	2. Clause 12 (Privacy);
	3. Clause 14 (GST);
	4. Clause 16 (Security);
	5. Clause 17 (Insurance);
	6. Clause 18 (Dispute Resolution);
	7. Clause 19 (General); and
	8. Clause 20 (Definitions).
2. The parties further agree that when incorporated in this Agreement, all references in the foregoing clauses to:
	1. ‘you’ or ‘your’ shall be read as a reference to the ‘Licensee’ under this Agreement;
	2. ‘we’ or ‘us’ shall be read as a reference to the ‘Licensor’ under this Agreement;
	3. ‘Terms’ shall be read as a reference to the terms and conditions in this document;
	4. ‘Services’ shall be read as a reference to the ‘Support Services’ under this Agreement; and
	5. ‘Deliverables’ shall be read as a reference to the ‘Software’ under this Agreement.