

# SYNAGISM SOFTWARE LICENCE AGREEMENT

## IMPORTANT NOTICE

By copying, installing or using all or any portion of the Product you accept all the terms and conditions of this Agreement, including, in particular the limitations on:

- (a) use (including exercise of rights in copyright and the reproduction of trade marks) contained in clauses 2 and 9;
- (b) transferability in clause 5;
- (c) warranty in clause 9;
- (d) liability in clause 10;
- (e) and specific provisions and exceptions in clause 17;

You agree that by agreeing to proceed past this point by clicking "I Agree", you entering a binding legal agreement.

This Agreement is enforceable against you and any legal entity that obtained the Product and on whose behalf it is used, including, if applicable, your employer or any entity of which you are an officer. By proceeding, you warrant that you have the authority to bind each such entity.

If you do not agree to the terms of this Agreement, do not use the Product.

THE PRODUCT MAY INCLUDE TECHNOLOGICAL PROTECTION MEASURES DESIGNED TO PREVENT INFRINGEMENT OF COYPRIGHT AS WELL AS RIGHTS MANAGEMENT INFORMATION.

THE TECHNOLOGICAL PROTECTION MEASURES WILL PREVENT YOU FROM EXERCISING COPYRIGHT RIGHTS

GRANTED TO YOU UNDER THE PRODUCT LICENCE IF YOU DO NOT FOLLOW THE ACTIVATION PROCESS DESCRIBED IN THE PRODUCT LICENCE AND ACTIVATION INSTRUCTIONS

## SYNAGISM LICENCE TERMS AND CONDITIONS

### IT IS AGREED

#### 1. DEFINITIONS

1.1 In this Agreement, unless there is something in the subject or context inconsistent, the following terms shall have the following meaning:

**"Synagism"**, **"we"**, **"us"** and **"our"** means Synagism.com, a division of Synagism Pty Ltd (ACN 112 290 972) of 169A Jasper Road, Bentleigh Victoria 3204 Australia;

**"Synagism software"** means software sold using Synagism.com website and the "EasySeoSoftware.com" website. The website [www.easyseosoftware.com](http://www.easyseosoftware.com), is a website owned by Synagism Pty Ltd (A.C.N 112 290 972).

**"you"** and **"your"** means you the customer;

**"Commencement Date"** means when the Product is downloaded from the Synagism website or EasySeoSoftware website or delivered to you, whichever is sooner.

**“Computer”** means a mechanical or electronic device or series of devices that accepts information in digital or similar form and uses a set of statements or instructions directly or indirectly in order to bring

about a certain result using (directly or indirectly) a set of statements or instructions;

**“Copyright Act”** means the *Copyright Act 1968 (Cth)*;

**“Corporations Act”** means the *Corporations Act 2001 (Cth)*;

**“GST”** means a Goods and Services Tax within the meaning of the GST Act;

**“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**“Intellectual Property”** means all confidential information, patents, patent applications, trademarks, trade mark applications, trade names, domain names, copyrights and designs, and all inventions and know-how (including manufacturing data, specifications, drawings and manufacturing instructions, capable or not of protection by registration) and all rights to use any of the foregoing owned by or used by a party in connection with the development, manufacturer or supply of any and all Products;

**“Permitted Number”** means one (1) computer screen or other display device unless otherwise indicated under a valid licence (e.g., volume licence) granted by Synagism;

**“Permitted Supply”** means the supply of the Product to you for your exclusive use;

**“Person”** means an individual, a corporation, a partnership, a limited liability company, a government or statutory body or authority, a trust, or any other entity or organization including a department of government;

**“Price”** means the Product price, postage and handling charges, and any and all taxes, charges and incidental fees that may arise from your purchasing the Product;

**“Synagism Product” or “Product”** means the Synagism software package(s) (and the individual components thereof) or separate individual Synagism Product(s) sold on the Synagism.com website and the EasySeoSoftware.com website including web design materials and tools, video and audio creation editing and compression materials and tools, website search engine optimization ranking materials and tools, secure electronic file storage retrieval and delivery tools, website audio and video embedding materials and tools, creation and delivery of audio and video for mobile devices materials and tools, creation and delivery of audio and video for Personal Computers, copyright works (including artistic and literary works), sound recordings, cinematograph films and published editions of works, together with broadcasts (if any) and:

(a) the service (including a teletext service) that provides only data or only text (with or without associated images);

(b) the service that makes programs available on demand on a point-to-point basis including dial-up service;

(c) all of the information provided by Synagism including but not limited to:

(i) Synagism or third party software files and other computer information;

(ii) related explanatory written materials and files (“Documentation”); and

(iii) all advertising, promotional or technical material of which Synagism or its agents is the matter (d) any modified versions and copies of, and upgrades, updates and additions to, such information, provided to you by Synagism at any time, to the extent not provided under a separate agreement (collectively, “Updates”)

all having the technical specifications and platform requirements described and set out in the Schedule and which are listed on the Synagism.com website and which we have agreed to supply to you on these Terms and Conditions of Sale;

“**Server**” means the computer or computers onto which data will be downloaded and stored (including any authorized back-up) and from which materials created using the Product will be accessed by viewers of your website including any applications service provided by Synagism through our own computers;

“**Term**” means the period specified in clause 3;

“**Territory**” means Australia and New Zealand

1.2 Except to the extent that the context otherwise requires:

(a) words denoting individuals or persons include bodies corporate and vice versa;

(b) words importing the singular number or plural number shall include the plural number and vice versa and words importing one gender shall include any other gender; (c) reference to statutes or regulations or any section or clause thereof shall include any statutes or regulations enacting amending or consolidating the statutes or regulations sections or clauses referred to;

(d) headings are for conveniences only and shall not affect the interpretation of this Agreement;

(e) all references to money ‘**USD**’ or ‘\$’ refer to American currency;

(f) all references to time are computed according to Australian Eastern Time (or Australian Eastern Summer Time in Melbourne, Australia) and the case may be; and

(g) references to any document or agreement includes references to any document or agreement as amended, varied or replaced from time to time; and

## **2. GRANTING OF LICENCE**

2.1 As long as you obtained the Product from Synagism or one of its authorized licensees, Synagism grants you a non-exclusive licence for the Permitted Number subject to the Permitted Supply, to use the Product in the manner and for the purposes described on the Synagism website ( where specified), on the Server during the Term subject to these Terms and Conditions.

## **3. DURATION OF AGREEMENT**

3.1 This Agreement shall commence on the Commencement Date and shall, subject to earlier termination in accord with this Agreement continue in full force unless terminated by Ninety (90) days notice in writing from one party to the other.

## **4. OUR UNDERTAKING**

4.1 In consideration for payment of the Price as set out in the Schedule we will:

(a) supply you with a copy or copies of the Product by making it available to you for download from the Synagism website or the EasySeoSoftware website or by delivering it to you at the address you specify;

(b) provide such Additional Services at the charges specified in the Schedule ( where applicable)

## **5. YOUR UNDERTAKING**

5.1 You will:

(a) take delivery of the Product in accord with the terms of this Agreement;

(b) pay the Price in accord with the Payment Terms specified **in** the Schedule;

(c) not unbundle or repackage the Product for distribution, transfer or resale;

(d) not copy the Product;

(e) not unbundle the component parts of the Product for use on different Computers and/or Servers;

(f) not reverse engineer or decompile the product **except** for those purposes expressly permitted by the Copyright Act and which may not be excluded by virtue of section 47H.

(g) promptly supply necessary data and ensure that any material you provide to us for use in any format is not defamatory nor does it infringe the privacy or intellectual property rights of any person;

5.2 You may transfer all your rights to use the Product to another individual or legal entity provided that:

(a) you also transfer:

(i) this agreement,

(ii) the serial number(s), the Product and all other software bundled, packaged or pre-installed with the Product, including all copies, upgrades, updates and prior versions;

(b) you retain no upgrades, updates or copies, including backups and copies stored on a computer;

(c) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions under which you purchased a valid license to the Product. Prior to a transfer Synagism may require that you and the receiving party confirm in writing your compliance with this Agreement, provide us with information about yourselves, and register as end-users of the Product.

5.3 If you wish to upgrade or update from a previous version of the Product, you must possess a valid licence to such previous version in order to use such upgrade or update. All upgrades and updates are provided to you on a licence exchange basis. You agree that by using an upgrade or update you voluntarily terminate your right to use any previous version of the Product. As an exception, you may continue to use previous versions of the Product on your Computer after you use the upgrade or update but only to assist you in the transition to the upgrade or update, provided that the upgrade or update and the previous versions are installed on the same Computer. Upgrades and updates may be licensed to you by Synagism with additional or different terms.

5.4 You are responsible for ensuring that the Product conforms with all relevant applicable law, legislation and regulations in force in the Territory.

5.5 It is your responsibility to obtain all necessary approvals and certifications and to ascertain that your use of the Product, in the respective parts of the Territory, complies with the applicable law, legislation and regulations, and not to allow the Product to be sold or distributed if they do not comply with these specifications.

## **6. CHARGES AND PAYMENT**

6.1 The Price you pay for the Product is based on the current price prevailing at that time of purchase as set out on the Synagism or EasySeoSoftware websites. We reserve the right to adjust the Price as shown on the Website as may be deemed necessary.

6.2 The Price displayed on the above named Websites of the Product, as well as all other fees and charges payable by you under this Agreement, are Exclusive of any Australian taxes, duties, fees or other government levies or charges which may be imposed on or in respect to the Product supplied pursuant to the Agreement or otherwise.

6.3 If the Purchase is made from an Australian location, the Australian taxes, duties, fees or other government levies or charges are then added onto the price of the Product and displayed accordingly within the Purchase process. In particular, we will not issue you with a tax invoice (as defined in the GST Act) for the Price for the Product unless specifically requested in writing. If the Purchase is NOT made from an Australian location, then no additional taxes & other charges apply, and thus no tax invoices apply to be issued.

6.4 If you fail to make any payments due in accord with this Agreement we have the right (without prejudice to its rights or remedies under this Agreement and at law) to:

- (a) suspend the performance of its obligations under this Agreement;
- (b) determine the Agreement;

6.5 We are not responsible for payment of any taxes or charges payable in respect of the supply of the Products outside Australia and you will indemnify us and agree to pay any and all such charges which may be imposed on us if you request us to make such a supply, whether you have knowledge in advance that such taxes or charges will be imposed or not

## **7. DELIVERY**

7.1 Delivery will usually be by Electronic Download from the Synagism.com and EasySeoSoftware.com websites.

7.2 Delivery may also take place only if specifically requested and for an additional fee by delivery of the Product to you at your premises for installation by you on your Computer and/or Server and at your expense.

7.3 The cost of delivery (postage and handling) under 7.2 will be borne by you, as detailed in the Schedule

## **8. EXPORT RULES**

8.1 You agree that the Product will not be shipped, transferred or exported into any country or used in any manner outside the Territory without our prior written consent.

## **9. LIMITED WARRANTY**

9.1 Except as may be otherwise provided in clause 12, Synagism warrants to the individual or entity that first purchases a license for the Product for use on the Computer and/or Server pursuant to the terms of this Agreement that the Product will perform substantially in accordance with the Documentation for the Ninety (90) day period following receipt of the Product when used on the recommended operating system and hardware configuration. Non-substantial variation of performance from the Documentation does not establish a warranty right.

9.2 THIS LIMITED WARRANTY DOES NOT APPLY TO PATCHES, TRYOUT, STARTER, EVALUATION, PRODUCT SAMPLER, OR NOT FOR RESALE (NFR) COPIES OF SOFTWARE.

9.3 All warranty claims must be made, along with proof of purchase, within a Ninety (90) day period. If the Product does not perform substantially in accordance with the Documentation, the entire liability of Synagism and its affiliates and your exclusive remedy will be limited to either, at Synagism's option, replacement of the Product or refund of the license fee you paid for the Product.

## **10. DISCLAIMER AND LIMITATION OF LIABILITY**

10.1 THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY SYNAGISM AND ITS AFFILIATES AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR SYNAGISM, ITS AFFILIATES OR SUPPLIERS' BREACH OF WARRANTY. SYNAGSIM AND ITS AFFILIATES AND SUPPLIERS PROVIDE THE PRODUCT AND ACCESS TO ANY WEBSITES, ONLINE SERVICES AND CD SERVICES AS-IS AND *WITH ALL FAULTS* AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

10.2 Despite clause 8 and this clause, nothing in the Agreement excludes, restricts or modifies any condition, warranty, right or liability implied into this Contract (including any condition, warranty, right or liability imposed by the *Trade Practices Act 1974 (Cth)* or the *Fair Trading Act 1995 (Vic)* where to do so is illegal or would render any provision of this Contract void.

10.3 INFORMATION (INCLUDING ANY FILE) OBTAINED FROM OR THROUGH THIS SITE IS NOT REPRESENTED NOR CAN IT BE RELIED UPON TO BE FREE FROM COMPUTER VIRUSES OR OTHER FAULTS OR DEFECTS. IT IS YOUR RESPONSIBILITY TO SCAN ANY SUCH INFORMATION FOR COMPUTER VIRUSES. YOU EXPRESSLY AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY LOSS OR DAMAGE (WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR ECONOMIC), HOWEVER CAUSED AND WHETHER BY NEGLIGENCE OR OTHERWISE, WHICH MAY RESULT DIRECTLY OR INDIRECTLY FROM ANY SUCH INFORMATION.

10.4 The provisions of clause 9 and clause 10 will survive the termination of this Agreement, howsoever caused but this will not imply or create any continued right to use the Product after termination of this Agreement

## **11. INDEMNITY AND INSURANCES**

11.1 You agree to be solely responsible for and to defend and indemnify us and our respective officers, agents and employees and to hold each of them harmless from all costs, expenses, claims, demands, suits, proceedings, causes of action or damages including legal fees and taxes, fees or charges which may be incurred outside Australia arising out of your actions including the sale, distribution, promotion and marketing of the Product or any services or goods marketed or sold using the Product.

11.2 You will take out and maintain throughout the Term and thereafter for the length of any limitation period under the terms of any law or statute of any jurisdiction within the Territory in respect of sales or use during the Term, such product liability insurance as you may consider reasonable in respect of all claims made in respect of any damage or harm caused to any person as a result of the use or sale of the Product pursuant to this Agreement

## **12. PROTECTION OF RIGHTS**

12.1 All Intellectual Property used or embodied in or in connection with the Product and any part thereof are and remain the sole property of Synagism or such other party as may be identified therein or thereon as owner.

12.2 The Product is licensed, not sold. Synagism permits you to download, install, use, or otherwise benefit from the functionality or Intellectual Property in the Product only in conformity with the terms of this Agreement. Use of some third party materials included in the Product may be subject to other terms and conditions typically found in a separate licence agreement or 'Read Me' file located near such materials.

12.3 The structure, organization and source code or other coding which is not directly readable by humans forming part of the Product are the valuable trade secrets and confidential information of Synagism and its suppliers. The Product is protected by law, including but not limited to the copyright laws of Australia and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any Intellectual Property rights in the Product and all rights not expressly granted are reserved by Synagism and its suppliers.

12.4 Subject to clause 5 you agree not to assign, sell, mortgage, pledge, rent, lease, authorize any portion of the Product to be copied onto another individual or legal entity's Computer, part with possession of or grant rights (whether in law or in equity) to the Product or any Upgrade you may attempt to make without our written consent.

12.5. You may not otherwise modify, adapt or alter the format or screen displays of the Product, reverse engineer, disassemble, decompile or otherwise attempt to discover the source code of the Product or otherwise modify the Product without our written consent including all uses permitted by the Copyright Act excepting only those which may not be excluded by virtue of section 47H.

### **13 TERMINATION**

13.1 If either party shall default in the performance of its obligations under this Agreement, and if such default shall not be corrected within Thirty (30) days after it has been called to the attention of the defaulting party by the complaining party in writing, then the complaining party may forthwith terminate this Agreement.

13.2 This Agreement is terminable at the option of a party if any of the following occurs in respect to the other party to this Agreement:

(a) if a receiver or a receiver and manager of the other party's undertaking or assets or any part thereof or of any part of the income thereof is appointed or the other party calls a meeting of its creditors pursuant to the Corporations Act;

(b) if an administrator is appointed to the other party or it enters into a scheme of arrangement or administration or if an application is made or a resolution is passed for its winding up;

(c) if any ground shall arise upon which a court may order the winding up of the other party or if it proposes or makes a composition or arrangement with its creditors or any of them;

or

(d) if a mortgagee or other encumbrancer shall seize or enter into possession of the whole or any part of the property of the other party.

### **14 EFFECT OF TERMINATION**

14.1 Upon termination of this Agreement through your fault or insolvency:

(a) your licence to use the Product ceases; and

(b) you must return all confidential information including passwords and codes to us;  
or

(c) verify by statutory declaration that you, your servants and agents have permanently deleted and destroyed such passwords and codes.

### **15. NO ASSIGNMENT**

15.1 You must not assign or grant any sub-license, mortgage or lease or otherwise deal with or transfer any of your right, title or interest hereunder without our prior written consent. Any purported assignment or grant of sub-license or mortgage or dealing or transfer of any such right, title and interest in contravention of this clause shall be void and of no effect.

### **16 COMPLIANCE WITH LICENCES**

16.1 If you are a business, company or organization, you agree that upon request from Synagism or its authorised representative you will within Thirty (30) days fully document and certify that use of any and all Synagism Product at the time of the request is in conformity with your valid licences from Synagism.

### **17. SPECIFIC PROVISIONS AND EXCEPTIONS**

17.1 This clause sets forth specific provisions related to certain components of the Product as well as limited exceptions to the above terms and conditions. To the extent that any provision in this clause is in conflict

with any other term or condition in this agreement, this clause will supersede such other term or condition.

#### 17.2 Online Services

(a) The Software may rely upon or facilitate your access to websites maintained by Synagism or its affiliates or third parties offering goods, information, software and services ("Online Services"). Your access to and use of any website is governed by the terms, conditions, disclaimers and notices found on such site. Synagism may at any time, for any reason, modify or discontinue the availability of any website and Online Services.

(b) Synagism does not control, endorse or accept responsibility for websites or Online Services offered by third parties. Any dealings between you and any third party in connection with a website or Online Services, including delivery of and payment for goods and services and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party.

(c) EXCEPT AS EXPRESSLY AGREED BY SYNAGISM OR ITS AFFILIATES OR A THIRD PARTY IN A SEPARATE AGREEMENT, YOUR USE OF WEBSITES AND ONLINE SERVICES IS AT YOUR OWN RISK. PLEASE SEE CLAUSES 10 AND 11 FOR WARRANTY AND LIABILITY LIMITATIONS WHICH GOVERN WEBSITES AND ONLINE SERVICES.

#### **18. GOVERNING LAW**

18.1 The construction, validity and performance of this Agreement shall be governed in all respects by the laws in force in the State of Victoria, Australia. The parties agree to submit and be subject to the jurisdiction of the Courts of Victoria, Australia.

18.2 This Agreement will not be governed by the conflict of law rules of any jurisdiction or the Vienna Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

#### **19. GENERAL PROVISIONS**

19.1 Nothing in this Agreement shall be construed to place the parties in a relationship of principal and agent, partners or joint venturers. Neither party has power to pledge the credit of the other or bind the other in any manner whatsoever or to take any action or to do any act or thing in its name.

19.2 In the event of any inconsistency between the terms of this Agreement and any terms attaching to any delivery docket or invoice the terms of this Agreement shall prevail to the extent of the inconsistency.

19.3 No variation, waiver or modification of the terms of this Agreement shall be valid unless in writing and signed by or on behalf of the parties.

19.4 Each party is solely responsible for its own legal costs and other outgoings in relation to the preparation execution and delivery of this Agreement.

19.5 Each party shall promptly do and perform all such further acts and execute and deliver all further instruments required by law or reasonably requested by the other party to establish, maintain and protect the respective rights and remedies of the other party and to carry out and effect the intent and purpose of this Agreement.

19.6 The provisions of the Agreement shall remain in full force and be binding upon the parties notwithstanding the expiry of the Term.

19.7 If any covenant or term of this Agreement shall become illegal, invalid or unenforceable that covenant or term shall be deemed void and severable and the remaining covenants and terms shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

#### **20. ENTIRETY**

20.1 This Agreement embodies the entire understanding of the parties and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Product. There are no promises, terms, conditions or obligations oral or written, expressed or implied other than the terms contained in this Agreement.

If you have any questions regarding this agreement or if you wish to request any information from Synagism please use the contact information included with this product to contact the Synagism office.

Synagism, Synagism.com, Conversion Wizard, WebSync Media Player, WebSync Wizard, WebSync Search, Websync Media Communicator Creator, Websync Media Communicator Exe Generator, Websync Media Player, Embedder, Synagism Mobile Converter, Synagism Pocket Player Synagism Creative Business Suite are either the registered trademarks or trademarks of Synagism Pty Ltd in Australia and/or other countries.

## **SCHEDULE**

***Product Prices appearing on the Website are in American Dollars ( USD). The Website purchase page, as amended from time to time, should be read as, and are forming part of this Agreement.***

All current Synagism products, either sold as a single product or as part of a specific package, as well as details of current Maintenance and Support charges are set out on the Synagism.com website. If the Product(s) are delivered by Post or other similar, then the total costs applicable to that form of Delivery shall be borne entirely by the Person receiving the Product.