

Site Development & Licence Agreement

Primary Contact

| | | | |
|---------------------|-------|----------|---------|
| Client Company Name | | ABN | |
| Contact Name | | Position | |
| Address | State | Postcode | Country |
| Phone | Email | | |

Summary of Fees:

Online Community Creation, including self-branded Mobile App Development \$28,490.50 plus gst
Monthly Licensing Fee up to 3,000 users \$390 plus gst per month. *(Min 12-month commitment= \$4680)*
Optional Extra - Custom Database Integration \$13,000 plus gst

Your Site Platform Includes:

- ✓ Consultation session to assess your associations personal customisation needs (homepage, styles, fonts, wording, and features).
- ✓ Customisation plan and branded demo during the planning stage.
- ✓ Self-branded Mobile app connected to your member community, available on both iOS and Android as native apps, with push notification support for members
- ✓ A 2-hour workshop where we will work with you to define the platform you will make available to site users & the benefits available to each. Delivered via Zoom.
- ✓ A 2-hour workshop where we will work with you to develop the launch strategy to building the momentum of your community. Determine how to manage self or auto-enrol. Delivered via Zoom.
- ✓ A 2-Hour training workshop with your administration team on use of the platform.
- ✓ Ability to recommend items for incorporation into the development roadmap.
- ✓ Unlimited access to Trybz Support Service Desk to access help desk ticketing system and Help Manuals and Videos.

Executed as an Agreement as at: (date) _____

Signed for and on behalf of Trybz Pty Ltd by its duly authorised representative

Signed for and on behalf of the Client Company by its duly authorised representative

Signature of authorised representative

Signature of authorised representative

Name of authorised representative (please print)

Name of authorised representative (please print)

PLEASE EMAIL COMPLETED FORM TO info@trybz.com.au

Terms and Conditions

- 1) **Parties.** This site development and licence agreement (henceforth “Agreement”) is with Trybz Pty Ltd (ACN 640 388 405) (henceforth “Trybz”) and the organisation applying (henceforth “Client”) (collectively henceforth “Parties”).
- 2) **Approval.** This form is an application only and becomes a contract only when signed by both Parties.
- 3) **Modification.** This Agreement may not be modified, amended, added to, or otherwise varied except where mutually agreed in writing by the Parties.
- 4) **Purpose.** Trybz owns certain computer software described as [A cloud based community building platform for your members, to support and build strong and engaged communities through services such as Groups, Events, Store, Resources, Videos, Jobs and Suppliers] (henceforth the “Software” or “Trybz software”) and has agreed to grant to the Client a non-exclusive licence to use that Software on the terms and conditions set out in this Agreement.
- 5) **Warranties.** Trybz warrants to the Client that the Software will meet the advertised description. Each Party warrants to the other that it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it. Trybz does not warrant that the Software will always be accessible or functional and Trybz does not warrant continuous integrated functionality with third party applications, but Trybz must use its best endeavours to cause the Software to be accessible and functional at all times, and with continuous integrated functionality with agreed third party applications, using due care and skill as would be expected from an experienced provider of software.
- 6) **Term.** The Agreement continues until terminated as per clause 17 or clause 18.
- 7) **Assignment.** The Client may not assign, sublicense, or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of Trybz, which consent must not be unreasonably withheld.
- 8) **Licence.** Trybz grants to the Client a non-exclusive, world-wide, non-transferable licence to use the Software during the Term solely in connection with the operation of the Software, subject to and in accordance with the terms and conditions set out in this Agreement. The Client may permit end users of the Software to use the Software as part of the normal process of using the Software.
- 9) **Licence restrictions.** The Client must not: use the Software for any purpose or in any manner other than as set out in clause 8; use the Software in any way that could damage the reputation of Trybz or the goodwill or other rights associated with the software; or permit any third party to use the Software other than as set out in clause 8. Except as expressly permitted by this Agreement, and except to the extent that applicable laws apply, including but not limited to the Copyright Act 1968 (Cth), the Client cannot: reproduce, make error corrections to or otherwise modify or adapt the Software or create any derivative works based upon the Software; de-compile, disassemble or otherwise reverse engineer the software or permit any third party to do so; or modify or remove any copyright or proprietary notices on the Software.
- 10) **Intellectual Property.** Nothing in this Agreement constitutes a transfer of any intellectual property rights except that to the extent the Client contributes instructions, code, imagery, ideas or intellectual property for the software or its customisation, in which case, the Client grants a royalty-free, perpetual, unrestricted licence to Trybz to use all such ideas and intellectual property, including for commercial purposes, and the Client warrants that: it has all necessary, current and enforceable rights and licences for the instructions, code, imagery and other materials provided to Trybz; following the Client’s instructions and providing related services will not cause Trybz to contravene any laws, including advertising standards, competition or consumer laws, gambling regulations, copyright or other intellectual property laws; Trybz use of the Software or instructions, code, imagery or other materials the Client supplies will not infringe upon any other entity’s intellectual property rights. The Client: acknowledges that Trybz owns all intellectual property rights in the Software; and will not directly or indirectly do anything that would or might invalidate or put in dispute Trybz’s title in the Software. If any person makes any claim alleging that any of the software (or use of any of the software) infringes any intellectual property rights or moral rights of any person, the Client must: promptly notify Trybz in writing; not make any admissions or take any action in relation to the claim without Trybz’s written consent; permit Trybz to have control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and cooperate with, assist and act at all times in accordance with the reasonable instructions of Trybz in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings. If Trybz receives any personally identifiable information in performing its obligations under this Agreement, it will only use that information for performing its obligations under this Agreement and will not disclose it to any third parties. Trybz must safeguard against destruction, loss, alteration, disclosure or misuse of any data which is generated, compiled or arranged as a result of the provision or use of the Software, and indemnifies the Client against any losses arising from Trybz’s failure to safeguard that data in a manner that would reasonably be expected of an experienced provider of software.

- 11) **Fees.** The Client agrees to pay 100% of the site development fee and customisation fee set out on page 1 to Trybz within (14) days of signing of this Agreement. Trybz will begin work on making the Software usable for the Client only after receipt of those Fees. *Licensing fees, as set out on page 1, are payable monthly in advance, payable on the first day of each month for the duration of the term of the Agreement. Licensing fees are payable from (i) the date the Client site is live, or (ii) two months from the date this Agreement is signed, whichever is sooner.* Licensing fees may change from time to time at the sole discretion of Trybz with prior notice to the client. Such changes must be reasonable. Barring any statutory requirements or as otherwise set out herein, all Fees are non-refundable, and do not include fees payable to third party software or service providers (e.g. MYOB, Xero) with which the Trybz software may interact (henceforth “third party fees”) Before Trybz incurs any third party fees, it must source an estimate of those fees and then obtain the approval of the Client.
- 12) **Feedback:** As Trybz develops additions to the existing Software or develops new software of a similar nature to the Software, Trybz agrees to seek the feedback of the Client in the development, and will use reasonable endeavours to incorporate reasonable feedback into the additions of the Software or the development of new software. Additions to the existing Software will not result in additional Fees unless otherwise mutually agreed by both Parties.
- 13) **Support:** If the software is not accessible and functional at any time during the Agreement, and the Client raises the issue with Trybz, then Trybz must use its best endeavours to rectify the deficiency as soon as reasonably practical. Unless the issue has been caused by the Client, this will be at no additional cost to the Client.
- 14) **Confidentiality.** Each Party agrees to keep confidential the terms of this Agreement and information which a Party should reasonably understand to be confidential to the other Party. Neither Party may disclose or permit the disclosure of confidential information of the other Party to any third party. If either Party becomes aware that they are in breach of this obligation, that Party will immediately notify the other Party. However, either Party may disclose information where it is required to do so for that Party to perform its obligations under this Agreement or as required by law. This clause survives this Agreement.
- 15) **Dispute Resolution.** If either Party considers that the other Party is in breach of this Agreement, it must serve written notice to the other Party specifying the nature of the breach. The other Party must respond within (7) days and expedite rectification of the breach.
- 16) **Termination.** Each Party is entitled to terminate this Agreement with 90 days’ written notice. Alternatively, at any time if:
 - a) the other Party defaults or fails to perform any material obligation contained in this Agreement; or
 - b) the other Party goes into liquidation or similar external control or does not pay its debts when they fall due or becomes insolvent; then the innocent Party may terminate this Agreement and/or terminate access to the Software, including specific end user access, immediately without notice; or
 - c) during development and/or implementation of the Client’s site the Client becomes aware of a matter that renders the Software not compatible or fit for purpose for the Client.
 - d) Trybz is entitled but not obliged to immediately terminate end user access to the Software and/or this Agreement if Trybz becomes aware of related usage that may, in the reasonable discretion of Trybz, infringe law or harm safety or reputation
- 17) **Consequences of termination.** If this Agreement is terminated by Trybz for any reason within 12 months of implementation of the Client site, except where the termination is due to breach by or liquidation of Trybz or the Client, Trybz will refund the Client 50% of the site development fee and customisation fee set out on page 1. If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available: each Party retains the claims it has against the other; except where the termination is due to breach by or liquidation of Trybz, the Client's right to use the Software immediately ceases and the licences granted under this Agreement terminate; Trybz will within (30) days, or at its discretion, delete all content associated with the Client’s use of the Software including end-user data; and the Client must immediately pay all outstanding Fees. If this Agreement is terminated subject to clause 17(c) above, then Trybz will refund fees paid less a reasonable amount as agreed by the Parties to cover Trybz’s time until the point they should reasonably have been aware. This clause 18 survives this Agreement.

- 18) **Notices.** All notices in connection with this Agreement must be in writing and, all notices from the Client to Trybz must be emailed to info@trybz.com.au and such notices are deemed received by Trybz on the next day which is not a Saturday, Sunday or public holiday in Queensland (henceforth “Business Day”) so long as the sender has not received a delivery failure notice, and all notices from Trybz to the Client may be emailed to the last email address the Client has communicated to Trybz as its address for service, and are deemed received by the Client on the following Business Day, so long as the sender has not received a delivery failure notice.
- 19) **Force Majeure.** Where one Party is unable to carry out its obligations under this Agreement due to circumstances beyond its control or which it could not have reasonably prevented those obligations are suspended whilst those circumstances continue, provided the other Party is notified and the first Party uses its best endeavours to overcome the circumstances preventing its obligations from being carried out. Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a Party's performance under this Agreement for more than thirty (30) consecutive days, the other Party may immediately terminate this Agreement by written notice.
- 20) **Liability.** The Client acknowledge and agrees that its access to and use of the Software is not assured and there are no warranties given by Trybz as to up-time or reliability of access, but Trybz must use its best endeavours to cause the Software to be accessible and functional at all times, and with continuous integrated functionality with agreed third party applications, using due care and skills as would be provided from an experienced provider of software. To the full extent permitted by law, Trybz excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages. To the full extent permitted by law, Trybz excludes all representations, warranties, or terms (whether express or implied) other than those expressly set out in this Agreement. Except for as provided under clause 10 above regarding indemnity for any losses resulting from inadequate safeguarding of data. Trybz's total aggregate liability for all claims relating to this Agreement is limited to the fees payable under this Agreement. Either Party's liability for any claim relating to this Agreement will be reduced to the extent to which the other Party contributed to the damage arising from the claim. This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations.
- 21) **Severability.** If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 22) **Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of Queensland and the Parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.
- 23) **Relationship.** Nothing contained in this Agreement creates any relationship of partnership or agency between the Parties.
- 24) **Entire Agreement.** In conjunction with the Trybz Technical Support Services summary, this Agreement constitutes the entire agreement between the parties as to its subject matter, and in relation to its subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by either Party.

Payment schedule

Agreed payments to be made as per below:

- 24 January 2022 \$10,000 deposit
- 1 March 2022 \$2000 + Hosting Fee waived
- 1 April 2022 \$2000 + Hosting Fee waived
- 1 May 2022 \$2000 + Hosting Fee waived
- 1 June 2022 \$2000 + Hosting Fee waived
- 1 July 2022 \$2000 + Hosting Fee waived
- 1 August 2022 \$2000 + Hosting Fee waived
- 1 September 2022 \$2000 + Hosting Fee waived
- 1 October 2022 \$2000 + Hosting Fee waived
- 1 November 2022 \$2000 + Hosting Fee waived