

Terms and Conditions

The terms and conditions apply to the Order Form between Synergy Enterprise Solutions ABN 17 619 932 133 ('Synergy') and (the 'Customer') to which these terms and conditions are attached, or which refers to and adopts these terms and conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means these Terms and Conditions and the Order Form in that order;

"Application" means the customized version of the Twilio communications platform developed for and licensed to the Customer pursuant to the Order Form.

"Calling Line Identification Laws" means legislation, industry codes and guidelines relating the handling and use of calling line identification code including without limitation the Privacy Laws, part 13 of the *Telecommunications Act 1997*, the Australia Communications Industry Forum Industry Code – Calling Number Display (ACIF C522:2007 February), and any applicable equivalent laws in any other jurisdiction;

"Client" means any third party for whom the Customer performs, or is engaged to perform a service using the Application;

"Commencement Date" means the date of last signature on the Order Form;

"Communication Service Provider" means a provider of communication services that is approved by Synergy.

"Confidential Information" of a party means all confidential data and information (including trade secrets and confidential know how) relating to that party, to its suppliers or customers, or to a Related Company or otherwise to that party from time to time, of which the other party becomes aware, either before or after the day this Agreement is signed. Confidential Information of Synergy includes the design, specification and content of the Application, the personnel, policies or business strategies of Synergy and the terms of this Agreement;

"Customer" means the person, company or other legal entity nominated as the customer in the Order Form and includes its Related Companies. If the Customer comprises more than one person the Agreement will bind each of those persons jointly and severally.

"Customer Data" means any and all data deposited, entered or added to the Software by or on behalf of the Customer or by Synergy on behalf of Customer and includes data owned or provided by Clients, data supplied by a third party and data derived from that Customer Data through the Software (including metadata analysis and data generated via the addition of supplementary information);

"Customer Responsibilities" means the customer responsibilities or obligations set out in this Agreement including the Order Form and anything Customer is reasonably required to do to enable Synergy to efficiently provide the Services;

"Documentation" means any documentation describing the features of, and means of use of, the Application, including the Features as published and amended by Synergy from time to time;

"Do Not Call Laws" means the Do Not Call Register Act 2006 (Cth) administered by the Australian Communications and Media Authority, and any applicable equivalent legislation in any other jurisdiction;

"Emergency" means a situation that, unless immediately remedied, has the potential to jeopardise human life or safety or to cause immediate risk to property;

"Equipment" means Hardware, Software and includes system, control units, attachments, cords, sockets, and power supplies as detailed in the Order Form.

"Fees" means the amounts specified in the Order Form or otherwise agreed in writing between the parties;

"Force Majeure Event" affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, or power, water and other utility shortage or acts or omissions of Providers ;

"Goods and Services Tax" or **"GST"** means any goods and services or value-added tax imposed by the GST Law;

"GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time, and any associated or equivalent legislation and regulations in any jurisdiction to the extent they relate to a Goods and Service Tax;

"Hardware" means hardware, including systems, control units, attachments, cords, sockets, and power supplies as detailed in the Order Form.

"Implementation" means the implementation services set out in the Order Form if any;

"Intellectual Property Rights" means all intellectual property rights including patent, copyright, trade mark (registered and unregistered), designs and any other rights of a like nature subsisting or conferred by law in force in any part of the world;

"Maximum Users" means the maximum number of users as defined in the Order Form;

"Minimum Operating Environment" means the network specification document supplied by Synergy from time to time;

"Non-excludable Condition" means an implied condition, warranty or guarantee, including under the Competition and Consumer Act 2010 (Cth), the exclusion of which from a contract would contravene any statute or cause any part of this Agreement to be void;

"Operating Environment" has the meaning given in clause 5.1;

"Order Form" means the order form to which these Terms and Conditions apply;

"Payment Card Rules" means the Payment Card Industry (PCI) rules relating to credit card payments released by the PCI Security Standards Council (or its successor) from time to time and any applicable equivalent rules or legislation in any jurisdiction;

"Planned Outage" means a period of time that Synergy may interrupt its supply of the Services to Customer for routine maintenance or up- grading or other similar processes;

"Privacy Laws" means the Privacy Act 1988 (Cth) and any applicable equivalent legislation or rules in any jurisdiction;

"Provider" means a carrier, service provider or other supplier used by Synergy to provide some or all of the Services to a Customer;

"Regulator" means a regulatory authority that has the power to impose obligations or penalties in relation to the Services provided under this Agreement and includes the Australian Communications and Media Authority or equivalent any authority in any jurisdiction;

"Related Company" has the meaning given to the term related body corporate under Section 9 of the Australian Corporations Act 2001 (Cth);

"Service Level Agreement" or **"SLA"** means a measurable level of service relating the supply of any Services that may include service credits for failure to meet service standards.

"Services" means the services provided by Synergy in accordance with this Agreement and includes provision of, or provision of access to, the Software, the Implementation, the Support Services and the provision of any other goods and services described in the Order Form;

"Software" means all software, functionality, methodologies, services, Documentation and capability as specified in the Order Form.

"Super User" means a Customer nominated person or persons who have been trained in the use of the Software and have been certified by Synergy as a Super User;

"Support" and **"Support Services"** means any support processes and service levels in respect of the Equipment set out in Synergy's standard support processes and any service levels document and any additional services set out in the Order Form or Schedules, and any additional support services that the Customer may request and Synergy agrees to supply from time to time;

"Support Agreement" means an agreement for the ongoing support services for Synergy-supplied Equipment under Capex as described in the Order form or Schedules.

"Synergy Equipment" means the Equipment provided by Synergy (if any), other than Customer Equipment, and installed at a Customer site for the purposes of providing the Services to the Customer;

"Tax Invoice" means a tax invoice as defined in the GST Law, which also specifies the GST component of the Taxable Supply;

"Telecommunication Services" means any telecommunication links, PABX, inbound telephone numbers used to receive calls or outbound calling services used to make outbound calls;

“**Term**” has the meaning given in clause 2;

“**Termination Charge**” means the amount if any set out in the Order Form and all outstanding invoices;

“**Time and Materials Rates**” means the time and materials rates most published by Synergy from time to time or as otherwise agreed in writing between Synergy and Customer and set out in the Order Form;

“**Unacceptably High Credit Risk**” means that Synergy reasonably considers there is some doubt as to Customer’s ability to pay the Fees as and when they fall due, including as a result of:

- a. Customer’s previous payment history and payment behaviour (e.g. late payment, dishonoured payments or failure to pay);
- b. any previous advice from Customer about a potential inability or unwillingness to pay; or
- c. Customer’s use of the Service being inconsistently high when compared with previous usage patterns.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- a. to the extent of any inconsistency, the operative provisions of these Terms and Conditions take precedence over the attached Order Form;
- b. headings are for convenience only and do not affect interpretation;
- c. the singular includes the plural and conversely;
- d. the gender includes all genders;
- e. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- f. a reference to a person includes any Body Corporate, unincorporated body or other entity and conversely;
- g. a reference to a clause is to a clause of this Agreement;
- h. a reference to any party to this Agreement or any other agreement or document includes the party’s successors and permitted assigns;
- i. a reference to any agreement or document is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- j. a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- k. a reference to conduct includes, any omissions, statement or undertaking, whether or not in writing;
- l. a reference to includes, means includes without limitation; all references to \$ are to Australian dollars, unless otherwise specified; and
- m. A reference to a time means the time in Sydney, Australia, unless otherwise specified.

2. TERM

1. This Agreement commences on the Commencement Date and continues for the term set out in the Order Form.

3. EQUIPMENT AND SERVICES

1. Subject to the Customer Responsibilities, Synergy will provide the Equipment (if any) and Services as set out in the Order Form in accordance with the terms and conditions of this Agreement. In doing so Synergy warrants that:
 - a. it has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
 - b. it will act in good faith towards Customer and provide such assistance and co-operation as is practicable on request by Customer; during the term, the Equipment will operate substantially in accordance with the Documentation;

- c. It will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision of those Services and substantially in accordance with the requirements set out in the Order Form. However, Synergy does not warrant that the Services and operation of the Equipment will be uninterrupted or error free.
 - d. it has all rights necessary to supply the Documentation and to license the Software in accordance with this Agreement;
 - e. it will comply at all times with applicable law and regulation, including the Privacy Laws as they apply to Synergy from time to time; and
 - f. It will not do anything or make any statement that could harm the reputation of Customer.
 - g. Synergy provides the Service as is and makes no warranty as to the suitability of the Service to Customer.
2. The provision of the Equipment and the Services is subject to and dependent upon the Customer timely supply of all listed goods and/or services set out in the Order Form or outlined as dependencies for the Equipment and/or the Services. The provision of the Equipment and the performance of the Equipment are dependent on the Customer performing the Customer Responsibilities by the relevant date.
 3. Synergy will use its best endeavours to meet any service levels set out in this Agreement but will not be liable to the Customer for damages resulting from a failure to meet any service level.

4. GRANT OF LICENCE AND DATA

1. Subject to the terms and conditions of this Agreement, including Customer's payment of the Fees, Synergy grants to Customer during the Term a non-exclusive, limited, non-transferable, non-sub licensable license to access and use the Application.
2. During the Term, Customer grants to Synergy a worldwide, royalty free licence to use, reproduce, modify and adapt Customer Data to the extent necessary for Synergy to provide the Services and make the Software available to Customer in accordance with this Agreement.
3. Synergy will retain copies of Customer voice recordings for a 4 week period from the date of the call. Synergy will not be responsible for maintaining any voice recordings beyond this period of time, unless a specific archiving strategy and Fees have been agreed in writing with the Customer.
4. If Customer requests retrieval of a voice recording, then subject to an event described in this clause preventing such recording, Synergy may provide Customer with a digital file of the requested voice recording as soon as reasonably practicable.
5. Synergy is entitled to suspend all or part of the Services immediately where:
 - a. there is a Planned Outage, and wherever possible the planned outage will be subject to giving the Customer reasonable prior notice in writing;
 - b. an Emergency occurs;
 - c. a Force Majeure event occurs;
 - d. Synergy reasonably considers that it is necessary for unscheduled repair, maintenance or service of any part of its service;
 - e. Synergy, acting reasonably, suspects that there has been fraudulent or illegal use of the Services;
 - f. Synergy reasonably believes that there is significantly excessive or unusual use of the Service, having regard to amongst other things, Customer's previous usage or any forecast given to Synergy; or
6. On expiration or termination of this Agreement for any reason, Synergy will:
 - a. provide Customer with a copy in an industry standard format of all Customer Data on request; and
 - b. Unless instructed to do so sooner by Customer, permanently destroy all Customer Data stored by Synergy in connection with the Software within 12 months after termination.
 - c. To the extent of any inconsistency between these Terms and Conditions and the Order Form, these Terms and Conditions will prevail except to the extent that the Order Forms contains terms marked as "special conditions".

5. EQUIPMENT OPERATING ENVIRONMENT

1. Customer acknowledges that it is solely responsible for providing any operating environment, facilities, equipment and telecommunications and internet connections (not supplied by Synergy under this agreement) necessary to using and obtaining the benefit of the Equipment (“Operating Environment”).
2. Customer must ensure and Synergy is not liable to the extent that the Customer fails to ensure the Operating Environment meets the Minimum Operating Environment.

6. NOT USED

7. PAYMENT OF FEES

1. Unless otherwise provided in the Order Form or agreed between the parties, Synergy will issue invoices as follows:
 - a. 90% of one-off initial charges due on order + 30 days.
 - b. 10% of one-off initial charges due on successful customer test or go live.
 - c. Reoccurring services fees will be payable monthly in advance in accordance with the Order Form.
 - d. Usage services charges will be payable monthly in arrears.
2. Customer must pay each invoice issued by Synergy within 30 days after the date it is issued. Unless otherwise agreed, payment must be made by direct deposit in to Synergy’s nominated bank account. An additional charge may apply to any payments made by way of a credit card.
3. If Customer disputes an invoice, it must provide the notice of dispute within 14 days of the invoice date and pay the undisputed portion. For any disputed portion the parties must in good faith attempt resolution before the due date (30 days) failing which the dispute resolution provisions of this agreement will apply in respect to the unpaid portion.
4. If Synergy reasonably incurs additional expenses or disbursements necessary to carry out its obligations under this Agreement, Synergy may pass through those expenses or disbursements to Customer. Synergy shall inform Customer in advance of incurring any additional expense and Customer shall only be liable if such expenses are agreed [in writing in advance](#), provided always that Customer shall agree to all reasonable expenses. Synergy may include an expense as a line item on an invoice it issues subsequent to incurring the expense.
5. The monthly reoccurring fees may be subject to an annual price increase on expiry of the term of the Agreement if extended by agreement of the parties, such increases not to exceed the lower of 3% or the All Groups Consumer Price Index (CPI) published by the Australia Bureau of Statistics. A notice of any increase will be provided to the customer 90 days prior to any increase.
6. If Customer fails to make any payment to Synergy required under this Agreement when due, Synergy is entitled to charge Customer interest from the day on which payment was due to the date of payment at the annual rate of 1% per annum above the Commonwealth Bank indicative commercial lending rate as published in the Australian Financial Review.
7. Customer acknowledges and agrees that if it issues purchase orders to Synergy then it does so for its own administrative convenience and Customer agrees that all invoices issued by Synergy are valid and payable under the terms of this Agreement without the need for any purchase order process.
8. Synergy may offset any amounts payable to the Customer against any outstanding Fees.
9. Synergy shall have 160 days (as per clause 5.4.2 of the Telecommunications Consumer Protections Code (No. C628:2012), or such longer period as permitted by such code or any replacement code) from the last day of the end of the quarterly period in which such services were performed within which to reconcile all its charges and billing for that financial year and to raise any retrospective invoices that may be required to rectify any unbilled charges owing by the Customer.

10. Synergy shall use all reasonable efforts to keep its billing up-to-date and shall inform the Customer in writing as soon as practicable if Synergy becomes aware of any unreconciled or unbilled charges

8. GST

1. All amounts referred to in this Agreement are referred to on a GST Exclusive Value basis.
2. If any supply under this Agreement is a Taxable Supply, the party making the supply may, in addition to the payment for the Taxable Supply, recover the amount of the GST applicable to the Taxable Supply. Any amount of GST payable is payable at the same time as the payment for the Taxable Supply to which it relates.

9. USE OF CUSTOMER LOGO

1. The Customer grants Synergy a licence during the Term to use such logo and name but such use is always subject to the Customer's prior written consent before intended publication or display. Once this Agreement is at an end Synergy will immediately cease from displaying or using the Customer's name and logo in any manner
2. However should Synergy inadvertently use customer logo, the customer will advise Synergy and provide Synergy with reasonable time to remove this

10. CUSTOMER OBLIGATIONS, WARRANTIES, AND INDEMNITIES

1. Customer warrants that:
 - a. it has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
 - b. it will not breach the payment terms of this agreement;
 - c. The Customer warrants that it has made its own inquiries and has satisfied itself of the adequacy and suitability of all Equipment and Services to be supplied to Customer.
 - d. The Customer accepts and agrees to use the Equipment and Services in accordance with the terms and conditions of this Agreement and subject to the terms contained in any third party General Purpose Licence (GPL) delivered as part of this agreement
 - e. The Customer must nominate a Synergy Super User that after appropriate training Synergy will certify as a Super User. If the Super User changes, then Synergy may charge the Customer for up to five days of training at an agreed daily rate plus any out of pocket expenses to certify a replacement Super User.
 - f. Subject to the terms and conditions of this Agreement, including Customer's payment of the Fees when due and payable, Synergy grants to Customer during the Term an exclusive, limited, non-transferable licence to use the Software for the Service subject to the terms contained in any third party General Purpose Licence (GPL) delivered as part of this agreement.
 - g. it will abide by any reasonable rules or instructions relating to the use or performance of the Equipment notified by Synergy in writing;
 - h. it will not make any representations or give any warranties or other benefits in favour of any party (including a Client or proposed Client) that may give rise to a liability of Synergy (other than with the approval in writing of Synergy);
 - i. it will act in good faith towards Synergy and provide such assistance and co-operation as is practicable on request by Synergy for the delivery of the Services;
 - j. it will provide the remote access to allow Synergy to deliver its services;
 - k. it will provide the requisite contact to allow Synergy to effectively implement the Services required under the agreement;
 - l. it will give full and punctual performance of its obligations under this Agreement including providing any reasonable information and assistance requested by Synergy including conducting site surveys where relevant;
 - m. it will promptly inform Synergy of any facts or opinions directly relevant to the marketing of the Equipment and any use of the Equipment which is advantageous or disadvantageous to the interests of Synergy;
 - n. it will comply at all times with applicable laws and regulations including Privacy Laws and Payment Card Rules; and

- o. It will not do anything or make any statement that could harm the reputation of Synergy, the Equipment or Services.
- 2. Customer will be solely responsible for any representations, warranties or guarantees made or published concerning the Equipment or Service by Customer to the extent that such representations, warranties or guarantees are inconsistent with any warranties in this Agreement.
- 3. Customer indemnifies Synergy and its directors, officers, employees, contractors and agents against all losses (but excluding economic or consequential losses) suffered by Synergy as a result of a breach of these terms and conditions by the Customer in connection with:
 - a. any use by any third party (including any Related Companies) of, or access by any third party to, any Equipment or Service provided by Synergy to Customer to the extent that the loss was not occasioned by wrongful, reckless or negligent conduct of Synergy;
 - b. any information, data, images, graphics or material produced, stored, transmitted, accessed, downloaded or used by Customer, Client or any other person using the Services; and
 - c. Any claim made or action brought against Synergy by any person to whom the Customer grants access to the Service, including without limitation any Client.
- 4. Customer is responsible for the acts or omission of any third party using the Equipment or Service (including of its Related Companies) via the Customer or its premises as if they were its own.
- 5. Unless agreed by Synergy in writing Customer will not develop, distribute or sublicense or assist or permit any other person to develop, distribute or sublicense (directly or indirectly) the Synergy software.

11. CUSTOMER DATA

- 1. Synergy acknowledges that Customer Data is Confidential Information and is the sole and exclusive property of Customer and Synergy or its suppliers do not have any interest in any Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and Intellectual Property Rights ownership or right to use all Customer Data, and Synergy will not be responsible or liable for the deletion, correction, destruction, damages, loss or failure to store any Customer Data.
- 2. Customer warrants that no third party Intellectual Property Rights are or will be infringed by Customer's use of the Equipment in association with the Customer Data, including any such third party Intellectual Property Rights in any Customer Data.
- 3. Customer acknowledges that it is solely responsible for the accuracy and appropriateness of any Customer Data.
- 4. Customer indemnifies Synergy, and will keep Synergy indemnified from and against any and all liabilities, losses, claims, damages, demands, expenses or costs (including without limitation all consequential or special losses, loss of profit, loss of reputation and all interest, penalties and legal or other professional advisors' fees) resulting from or in connection with Customer Data, except and to the extent arising from any negligent, wilful or unlawful act or omission of Synergy.

12. TELECOMMUNICATIONS SERVICES

- 1. Customer acknowledges that it may acquire and use Telecommunication Services supplied by a Synergy approved Communication Service Provider as part of its use of the Services, and even when those Telecommunications Services are acquired by Synergy for Customer's use, Synergy has no control over the usage of these Telecommunication Services by Customer and Clients and consequently Customer accepts full liability and indemnifies Synergy for any loss that may arise from the inappropriate or illegal use of the Telecommunication Services including without limitation failure to comply with laws relating to collection, use and disclosure of voice recordings and other personal information, laws relating to unsolicited electronic messages (spam) and contraventions of the Do Not Call Laws and Calling Line Identification Laws.
- 2. Synergy may notify the appropriate Regulator that Customer is the beneficial user of the Telecommunication Services, so that any complaint or enquiry received from the Regulator in respect of any register or rules established under any Do Not Call Laws or any other applicable legislation, will be directed to Customer at all times. Customer accepts full liability and

indemnifies Synergy for any loss that may arise from any contravention of the any Do Not Call Laws or any other applicable legislation.

3. Synergy will allow the Customer to connect its own Inbound and Outbound Telecommunications Services by a Customer approved Communication Service Provider verified by Synergy and the Customer acknowledges that these services will not be under the control of Synergy. The Customer acknowledges that these changes may have a detrimental effect on
4. Synergy's ability to meet the services levels set out in the Agreement and Customer will not claim against Synergy for any such resulting failure to meet the service levels.

13. CONFIDENTIAL INFORMATION

1. Each party:
 - a. may use Confidential Information of the other party solely for the purposes of exercising its rights and performing its obligations under this Agreement and otherwise for the purposes of this Agreement;
 - b. except as permitted under clause 13.1(c), must keep confidential all Confidential Information of the other party;
 - c. may disclose Confidential Information of the other party only to
 - i. employees and subcontractors who are aware and agree that the Confidential Information of the other party must be kept confidential and are bound by obligations of confidentiality substantially the same as those set out in this Agreement; and either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party;
 - ii. to persons other than those referred to in clause 13.1(c) who have entered into a confidentiality agreement on substantially similar terms to the confidentiality requirements specified in this clause 13; or
 - iii. As required by law or stock exchange regulation.
2. Even though information is the Confidential Information of a party, the other party is not obliged to comply with clause 13.1 in relation to that Confidential Information if:
 - a. the Confidential Information becomes public knowledge during this Agreement except due to a breach of this Agreement;
 - b. the other party becomes aware of that Confidential Information from a third person who does not owe a duty of confidentiality to the party that owns the Confidential Information; or
 - c. where it remains known to an employee of the other party after that employee has ceased to be involved in the performance of this Agreement, and has become part of the general skill and knowledge of that employee;
 - d. In circumstances where there was no breach of any obligation of confidence.
3. A party's obligations of confidentiality in this Agreement do not apply to information which:
 - a. that party can prove was developed independently by that party without reference to the Confidential Information of the other party;
 - b. That party can prove was known to that party prior to the disclosure of the information by the other party.

14. PRIVACY

1. Each party must comply with all Privacy Laws.
2. Customer may, at its sole discretion, reveal the terms of this Agreement which relate to the confidentiality and security of Customer Data to a Client or prospective Client provided that Customer first obtains a signed non-disclosure agreement from that party to whom the disclosure is made.

15. INTELLECTUAL PROPERTY

1. Customer acknowledges that Synergy and its Suppliers owns or has the right to use all Intellectual Property Rights in the Equipment and the Documentation and Services provided under this agreement, and that this Agreement does not transfer ownership of any Intellectual Property Rights to Customer.

2. At the request of Customer Synergy will, subject to license fee, grant to Customer after the end of the term of the Agreement a perpetual - license to the Application .
3. Any Intellectual Property Rights in improvements, amendments or adaptations to the Equipment or Documentation whether made by Synergy, Customer or anyone else is the property of Synergy. Customer agrees to do all things reasonably required to give effect to this clause.
4. Customer must notify Synergy immediately if it becomes aware of any:
 - a. unauthorised access to or use of the Equipment or Documentation or services; or
 - b. Other breach of any Intellectual Property Rights of Synergy.
5. Synergy indemnifies Customer against any liability (including liability for reasonable legal costs) under an injunction or final judgement against Customer, based on a claim that use of any Application, or Documentation, by Customer in accordance with this Agreement is an infringement of the Intellectual Property Rights of any third person ("Claim"), except to the extent any such infringement is caused by an act or omission of Customer but only if:
 - a. Customer notifies Synergy immediately after it becomes aware of the Claim;
 - b. Synergy has sole control over defence of the Claim (even in Customer's name) and any negotiations to settle the Claim;
 - c. Customer allows its name to be used in any proceedings arising out of the Claim; and
 - d. Customer provides to Synergy all other assistance reasonably requested (and paid for) by Synergy to defend or settle the Claim.
6. If a Claim is made, Synergy may:
 - a. procure for Customer the right to continue using the Application, or the Documentation, free of the Claim; or
 - b. Replace or modify the Application, or the Documentation, so that they are no longer infringing.
7. Nothing in this Agreement assigns to Synergy ownership of any Intellectual Property Rights in any materials provided to Synergy by Customer or Customer Data.

16. EXCLUSION AND LIMITATION OF LIABILITY

1. Synergy makes no express warranties under this Agreement, other than the warranties in clause 3.
2. Each party excludes from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except any Non-excludable Condition.
3. Except for liability in relation to breach of any Non- excludable Condition and liability under clause 16.5 , each party's total liability to the other party in contract, including for one or more breaches of any express term or terms of this Agreement (in aggregate), tort (including in negligence), statute, or otherwise, is limited to an amount equal to the total amount actually paid by Customer to Synergy under this Agreement during the 12 months before the first liability arose.
4. Synergy's total liability to Customer for a breach of any Non-excludable Condition (except where by law Synergy's liability cannot be limited) is limited, at Synergy's option, where the breach relates to goods, the repair or replacement of the goods or paying the cost of having the goods repaired or replaced, or where the breach relates to services, supplying those services again, or paying the cost of having those services supplied again.
5. Except for liability in relation to breach of any warranty or a Non-excludable Condition, each party excludes all liability to the other for lost profits, lost revenue, lost savings, not meeting targets or previous averages, opportunity cost, loss of data and any consequential or indirect loss arising out of, or in connection with, any Services, the Application, any Documentation, and any claims by any third person (including any Client), or this Agreement, even if that party knew that loss was possible or the loss was otherwise foreseeable.
6. Neither party may commence any claim or proceedings against Synergy for any liability under or in connection with this Agreement outside of the maximum time periods provided under the Statute of Limitations.

17. TERMINATION AND SUSPENSION

1. A party ("Terminating Party") may immediately terminate the supply of equipment or services under this Agreement on written notice to the other party ("Terminated Party") if the Terminated Party breaches any non-monetary term of this Agreement, and fails to remedy that breach within 14 days after receiving notice requiring it to do so.
2. Customer will be liable for costs the termination of some services which may be subject to a minimum term in accordance with the order form.
3. Synergy is entitled, without prejudice to its other termination rights, to terminate this Agreement or suspend all or part of the Services immediately where:
 - a. Customer fails to pay any amount due under this Agreement by 14 days after the date it is due;
 - b. it is necessary due to a Force Majeure Event;
 - c. Synergy has a right under the Agreement to terminate the Service;
 - d. Synergy, acting reasonably, suspects that there has been fraudulent or illegal use of the Services;
 - e. Customer has breached its credit terms with Synergy or in Synergy's reasonable opinion Customer poses an Unacceptably High Credit Risk;
 - f. Customer attempts to assign, or assigns, any right under this Agreement otherwise than in accordance with clause 21;
 - g. Customer is subject to any event referred to in clause 18.4 (whether or not notified);
 - h. The Customer undergoes a change in control, and Synergy considers on reasonable grounds that such a change in control will be detrimental to Synergy's interests; or Synergy, in its absolute discretion, determines that the Service is no longer economically viable for Synergy to provide.
4. The Customer is entitled, without prejudice to its other termination rights, to terminate this Agreement with 48 hours notice where:
 - a. the Customer has a right under the Agreement to terminate the Service;
 - b. During the first 30 days of this Agreement only, the Customer, in its absolute discretion, determines that the Service is no longer required or does not meet the requirements of the Customer.
5. Synergy and the Customer will have the express rights of termination set out in the Order Form.

18. WHAT HAPPENS AFTER TERMINATION

1. On expiration or termination of services under this Agreement for any reason, Customer must immediately:
 - a. stop using the Application and Services;
 - b. destroy or return to Synergy, at its option, all copies of any Documentation and Confidential Information of Synergy in its possession or control; and
 - c. Returns any goods provided as part of the services in the condition they were provided subject to fair wear and tear. For goods not returned the service fees and charges associated will continue until received by Synergy or as agreed in writing by Synergy in its absolute discretion.
2. On expiration or termination of services under this Agreement for any reason all outstanding invoices for Services become due and payable immediately and Synergy may delete Customer Data at any time subject to giving Customer reasonable prior notice in writing
3. If Customer terminates any Service or this Agreement or if Synergy terminates the Agreement under clause 19.1-3, Customer must pay any applicable Termination Charge to Synergy, and such charge is due and payable immediately. Provided However, no Termination Charge shall be payable where Customer lawfully terminates this Agreement or terminates pursuant to the provisions of clause 2, 18.3(f) or 24.3 hereof. Rather only any invoice outstanding for the service will be payable as per the terms of this agreement.
4. Other than as provided for in this agreement, Customer acknowledges that Synergy will have no liability to Customer or any other person (including any Client) arising out of the termination of this Agreement (and the licence in respect of the software) for any reason authorized by the Agreement. Customer indemnifies Synergy, its Related Companies, and their

directors, officers, employees and contractors against any claim that any person (including without limitation any Client) has suffered any loss or damage in connection with the termination of any licence granted in accordance with this Agreement.

5. A party must notify the other party if:
 - a. any step is taken to enter into any arrangement between the party and its creditors (other than for the purposes of a solvent amalgamation or reorganisation);
 - b. the party ceases to carry on business;
 - c. any step is taken to appoint an administrator, a receiver, a receiver and manager, a liquidator, a provisional liquidator or other like person of part or the whole of the party's assets, operations, business; or
 - d. Any step is taken against the party by any government, government body or regulator for an unlawful reduction of its assets or the under its control.

19. ASSIGNMENT

1. Synergy may at any time; subject to written notice to customer assign the whole or any part of this agreement and may novate this Agreement to a Related Company without the Customer's consent.
2. Customer must not assign, or attempt to assign, any right arising out of this Agreement, or this Agreement, without Synergy's written approval, which approval will not be unreasonably withheld in the case of an assignment to a purchaser of the whole or any part of the businesses of the Customer.

20. NOTICES

1. A party giving notice or notifying under this Agreement must do so in writing directed to the recipient's address specified in the agreement or as altered by any notice; and
2. A notice given in accordance with this clause is taken to be received:
 - a. if hand delivered, on delivery;
 - b. if sent by prepaid post, 7 days after the date of posting; or
 - c. except for termination notices, If sent by email, at the time of sending.
3. Notwithstanding clause 21.1, any notice to be provided to Synergy under clause 18 must be addressed to the Chief Executive Officer and either hand delivered or sent by registered post.

21. DISPUTE RESOLUTION

1. If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case the nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. In the event that the parties are unable to resolve the dispute within seven (7) days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to a senior corporate executive of that party.
2. If the parties are unable to resolve the dispute within fourteen (14) days following referral to the senior corporate executives of the relevant parties, the parties must agree in good faith to attempt to resolve the dispute by attending a mediation conducted in accordance with the rules of the Australian commercial disputes centre. If the parties cannot agree on the appointment of a mediator, the mediator will be appointed by the president for the time being of the law society of New South Wales.
3. The costs of the mediator will be shared equally between the parties.
4. If a dispute remains unresolved after mediation has been conducted in good faith then either party may use such lawful dispute resolution procedures or seek such legal and equitable remedies as it considers necessary or appropriate in its sole discretion. The parties agree that any breach or threatened breach of this Agreement will cause the other party to suffer damages for which monetary damages alone would not be an adequate remedy.

5. Nothing in this clause shall prevent a party from seeking urgent injunctive relief before an appropriate court.

22. NON-SOLICITATION

1. During the Term and for a period of one (1) year after the end of the Term, each party undertakes not to engage (or seek to engage) any employee and/or contractor of the other party without the other party's prior written consent.
2. If either party breaches this clause 24, the other party may invoice the first party by way of liquidated damages an amount equal to:
 - a. if an employee of the other party, one year's salary at the employee's most recent salary rate; or
 - b. If a contractor of the other party, twelve (12) times the most recent month's invoice from the contractor (excluding GST).

23. FORCE MAJEURE

1. If a party ("First Party") is partially or wholly precluded from complying with its obligations under this Agreement by a Force Majeure Event affecting the First Party, then the First Party's obligation to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.
2. As soon as possible after a Force Majeure Event arises, the First Party must, if it has not already done so, notify the other party of the:
 - a. Force Majeure Event;
 - b. extent to which the First Party is unable to perform its obligations under this Agreement; and
 - c. Likely duration of the First Party's inability to perform.
3. If the Force Majeure Event affecting the First Party is likely to or does continue for sixty (60) days or more, the other party may terminate this Agreement with immediate or later effect by giving the First Party notice. If a party terminates this Agreement due to a Force Majeure Event, each party must bear its own costs in relation to that termination.

25. Subcontracting

1. Synergy may subcontract or partner with a provider to deliver any part of this agreement at its absolute discretion.

24. Synergy Equipment

1. In respect of any Synergy Equipment and Third Party Equipment supplied as part of the services delivered by Synergy to the customer under this agreement, the Customer acknowledges and agrees that:
 - a. the Synergy Equipment is, and shall at all times remain, the property of Synergy, and the Customer acknowledges that it obtains no legal or equitable interest in the Synergy Equipment greater than a mere right to use the Synergy Equipment in conjunction with the provision of the Services by Synergy and as directed by Synergy;
 - b. the Third Party Equipment is, and shall at all times remain, the property of the relevant Third Party, and the Customer acknowledges that it obtains no legal or equitable interest in the Third Party Equipment;
 - c. it will abide by and comply with any terms and conditions relating to the use of the Third Party Equipment as required by the supplier of that Third Party Equipment (other than Synergy);
 - d. the Customer must not sell, assign, charge or create any sub-lease or otherwise dispose of or abandon the Synergy Equipment or Third Party Equipment, nor allow the Synergy Equipment or Third Party Equipment to become a fixture on any land or property;
 - e. the Customer shall not seek to register any security interest under the PPSA or otherwise charge any of the Synergy Equipment or Third Party Equipment unless with Synergy's express consent;
 - f. the Customer shall not do any act or fail to do any act which has the effect of affecting any interest registered under the PPSA in respect of the Synergy Equipment or Third Party Equipment;
 - g. the Customer shall be responsible for any damage to the Synergy Equipment and Third Party Equipment whilst at any Site other than damage caused by the actions of Synergy, its employees, agents or subcontractors;

- h. the Customer undertakes to carry out all reasonable measures and precautions necessary to ensure that the Synergy Equipment and Third Party Equipment whilst at a Site is effectively protected and secured against the threat of any Loss;
- i. the Customer shall be obliged to pay the Initial Charges notwithstanding any Loss in respect of any Synergy Equipment or Third Party Equipment, unless such Loss was caused by Synergy and/or the Third Party;
- j. the Customer must not allow the Synergy Equipment or Third Party Equipment to be used other than as provided for under this Agreement and (unless Synergy otherwise agrees in writing) must be kept at the Sites at which such Equipment is installed by Synergy or the relevant third party; and
- k. The Customer will not be granted any right to use the Synergy Equipment or Third Party Equipment, or any part thereof, other than as is necessary in order to receive the benefit of the Services.

25. GENERAL

1. Any express statement of a right of a party under this Agreement is without prejudice to any other rights of that party expressly stated in this Agreement or existing at law.
2. This Agreement is governed by the laws of New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction there.
3. Nothing in this Agreement gives a party any right to:
 - a. bind the other party in contract or otherwise at law;
 - b. pledge the credit of another party; or
 - c. Hold itself out as a representative of the other party.
4. Each party must take all steps as may be reasonably required by the other party to give effect to the terms of this Agreement and transactions contemplated by this Agreement.
5. This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any oral or written prior agreement, representation or understanding relating to this Agreement and nothing herein gives rise to any relationship of employment, joint venture or principal and agent.
6. Damages may not be a sufficient remedy for breach of this Agreement. A party is entitled to specific performance or injunctive relief for any breach or apprehended breach of this Agreement, in addition to any other remedies available at law or in equity.
7. This Agreement may be executed in multiple counterparts and by electronic means.
8. Each party acknowledges that in entering into this Agreement it has not relied on any representation or warranties about its subject matter except as provided in this Agreement.
9. No delay, neglect or forbearance on the part of any party in enforcing against any other party any obligation under this Agreement will operate as a waiver or in any way prejudice any right under this Agreement.
10. If any provision of this Agreement is held to be invalid, illegal or unenforceable, this Agreement will continue otherwise in full force and effect apart from such provision which will be taken to be deleted.
11. Any variation of this Agreement must be in writing signed by each party.
12. No statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any Government agency (present or future) will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to Synergy under this Agreement, unless such application is mandatory by law.
13. This Agreement shall not be construed against a party merely because it was drafted by that party.
14. Each party must pay its own legal costs and expenses arising out of the preparation of and entering into this Agreement. Customer must pay any stamp duty or other duties chargeable in respect of or arising as a result of this Agreement.

15. Each clause which, by its nature, ought to survive the termination of this Agreement survives including without limitation clauses 8, 11, 14, 15, 16, 17, 21, 23, 25, 25 and 26.