Terms and Conditions

The terms and conditions apply to the Order Form between Synergy Enterprise Solutions Limited NZBN 9429052167706 ('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 any software 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 Act 2020, Telecommunications Act 2001, Telemarketing Code of Practice and Information Privacy Code 2020.

"**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 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;

"**Capex**" means capital expenditure.

"**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 New Zealand Telecommunications Forum Incorporated Code for Scam Calling and Scam SMS Prevention, the Fair Trading Act 1986 and the Do Not Call Register administered by New Zealand Marketing Association.

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

"**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 ;

"**GST Act**" means the Goods and Services Tax Act 1985;

"**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;

"Materials" means any software, data, diagrams, specifications, system configurations, plans, items, manuals, documented methodology or process, reports, training materials, user guides and any other materials and documents in whatever form;

"**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, 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 executed by both parties by which Customer orders Services under these Terms and Conditions, and any statements of work referenced in the Order Form;

"**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 2020;

"Product" means any Documentation, Material and Software referenced in the Order Form.

"**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 New Zealand Commerce Commission and Ministry of Business, Innovation and Environment;

"**Related Company**" has the meaning given to the term in the Companies Act 1993;

"**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, Application, 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 Product and Software 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 Product and Software under Capex as described in the Order form or Schedules.

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

"Taxable Supply" means a supply of goods and services in New Zealand that is charged with tax as defined under the GST Act.

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

"**Telecommunication Services**" means any telecommunication links, VOIP, Dialer, 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 rates agreed in writing between Synergy and Customer and set out in the Order Form;

"**Third Party Product**" means any product supplied by a third party as part of delivering the Services by Synergy.

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 New Zealand dollars, unless otherwise specified; and

m. A reference to a time means the time in New Zealand, 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. PRODUCT AND SERVICES

1. Subject to the Customer Responsibilities, Synergy will provide the Product (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 Product and Software will operate substantially in accordance with the Documentation;
   c. It will provide the Services in a manner consistent with industry standards reasonably applicable to the provision of those Services and substantially in accordance with the requirements set out in the Order Form and Documentation. However, Synergy does not warrant that the Services and operation of the Product will be uninterrupted or error free to the extent that the occurrence of such interruption was caused due to any of the situation as indicated in clause 4.5 occurred or the error was attributable to a third party which is outside of Synergy's reasonable control.
   d. it has all rights necessary to supply the Documentation and to license the Software in accordance with this Agreement and that Customer's use of Synergy's Materials (including Software) does not infringe the Intellectual Property Rights of any third party;
   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 Product and the Services is subject to and dependent upon the Customer's timely supply of all listed goods and/or services set out in the Order Form or outlined as dependencies for the Product and/or the Services in writing. The provision of the Product and the performance of the Product 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 the applicable Order Form 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 and Documentation.

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, and shall promptly delete such recordings thereafter. 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 at a time between 12am and 6am New Zealand time agreed with the Customer in advance;
   b) an Emergency affecting Synergy's provision of Services 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 and wherever possible will notify the Customer with as much notice as possible;
   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 this Agreement within 60 days after termination.

7. 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. PRODUCT OPERATING ENVIRONMENT

1. Customer acknowledges that it is solely responsible for providing any operating environment, facilities, Product and telecommunications and internet connections (not supplied by Synergy under this agreement) necessary to using and obtaining the benefit of the Product ("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. Synergy must give prior written notice to Customer of any changes to the Minimum Operating Environment and give Customer adequate time to comply with any changes.

6. 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 into 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 advance. 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 Stats NZ Tataurange Aotearoa. 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 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

10. Pricing may vary at any time without notice. If Synergy is notified by upstream carriers and vendors in reasonable time then Synergy will inform the customer.

7. GST

1. All amounts referred to in this Agreement are referred to on a GST exclusive 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, subject to provision of a valid Tax Invoice. Any amount of GST payable is payable at the same time as the payment for the Taxable Supply to which it relates.

8. USE OF CUSTOMER LOGO

1. Synergy may not use Customer's logo or name without its prior written approval.

9. CUSTOMER OBLIGATIONS, WARRANTIES, AND INDEMNITIES

1. Customer agrees:
   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. it has made its own inquiries and has satisfied itself of the adequacy and suitability of all Product and Services to be supplied to Customer.
   d. and accepts to use the Product and Services in accordance with the terms and conditions of this Agreement
   e. to 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 a non-exclusive, limited, non-transferable licence to use the Software for the Service

g. it will abide by any reasonable rules or instructions relating to the use or performance of the Product 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 in 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;

2. Both parties will comply at all times with applicable laws and regulations relevant to this Agreement;

3. Customer indemnifies Synergy and its directors, officers, employees, 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 any use by any third party (including any Related Companies) of, or access by any third party to, any Product or Service provided by Synergy to Customer to the extent that the loss was not occasioned by wrongful, reckless or negligent conduct of Synergy;

4. Customer also indemnifies Synergy any claim made or action brought against Synergy:
   a. by any person to whom the Customer grants access to the Service, including without limitation any Client; or
   b. in relation to any information, data, images, graphics or material processed on the Software by Customer.

5. Customer is responsible for the acts or omission of a third party it gives access to the Product or Service (including of its Related Companies) via the Customer or its premises as if they were its own.

6. 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.

10. 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.

2. 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.

3. Customer warrants that no third party Intellectual Property Rights are or will be infringed by Customer's use of the Product in association with the Customer Data, including any such third party Intellectual Property Rights in any Customer Data.

4. Customer acknowledges that it is solely responsible for the accuracy and appropriateness of any Customer Data.

5. 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.

11. TELECOMMUNICATIONS SERVICES

1. Customer acknowledges that it may acquire and use Telecommunication Services supplied by a Synergy approved Telecommunication 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) under the Unsolicited Electronic Messages Act 2007 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 Customer to connect its own inbound and outbound Telecommunications Services by a Customer approved Telecommunication Service Provider verified by Synergy and 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 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.

12. 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 12.1(c), must keep confidential all Confidential Information of the other party;
   c. may disclose Confidential Information of the other party only to
      i. employees, third-party consultants, 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; or
      ii. 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 12.1 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. 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.

13. PRIVACY AND SECURITY

1. Each party must comply with the Privacy Laws.

2. Synergy shall indemnify Customer for any breach of this clause 13.

3. 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.

14. INTELLECTUAL PROPERTY

1. Customer acknowledges that Synergy and its Suppliers owns or has the right to use all Intellectual Property Rights in the Product, 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 and Documentation.

3. Any Intellectual Property Rights in improvements, amendments or adaptations to the Product 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 promptly if it becomes aware of any:
   a. unauthorised access to or use of the Product or Documentation or Services; or
   b. Other breach of any Intellectual Property Rights of Synergy related to this Agreement.

5. Synergy indemnifies Customer against any loss and liability (including liability for reasonable legal costs) based on a claim that use of any Software or Synergy's Materials, 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 promptly after it becomes aware of the Claim;
   b. Synergy has sole control over defence of the Claim and any negotiations to settle the Claim; and
   c. 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.

15. EXCLUSION AND LIMITATION OF LIABILITY

1. Synergy makes no express warranties under this Agreement, other than the warranties in clause 3.

2. This Agreement is subject to any applicable provisions of the New Zealand Consumer Guarantees Act 1993 (which requires Synergy to give certain guarantees to certain consumers of its products and services) and also to the provisions of any overriding laws of any other jurisdiction, to the extent in each case that those provisions override any provisions of this Agreement and cannot be contracted out of. In any situation where, and to the extent that, all or any of those provisions can be contracted out of, they are excluded and the provisions of this Agreement shall apply in their place.

3. Without derogating from clause 15.2 above Synergy and Customer agree that the terms of the Consumer Guarantees Act 1993 shall not apply to Customer if Customer has entered into Agreement for the purposes of a business or in trade, or Customer is not a New Zealand resident, and not physically in New Zealand when Customer entered into this Agreement.

4. Where, pursuant to the provisions of the Consumer Guarantees Act 1993, or the overriding law of any overseas jurisdiction, Synergy's ability to exclude or limit their liability is excluded or restricted, Synergy's liability shall be limited to the minimum liability imposed upon it by those provisions and the overriding law.

5. Synergy's liability under any other statutory right or any condition or warranty, including any implied by the Contract and Commercial Law Act 2017 or the Fair Trading Act 1986 or any similar Act is, to the maximum extent permitted by law excluded, and without limiting the foregoing, where Customer has entered into this Agreement for the purposes of a business or in trade, Synergy and Customer agree that all goods and services supplied by Synergy to Customer were supplied in trade, and that sections 9, 12A, 13, or 14(1) of the Fair Trading Act 1986 shall be of no application.

6. Except for liability in relation to breach of any Non- excludable Condition and Synergy's liability for breaches of clauses 14 and 25, 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 ("Maximum Claim Period").

7. Synergy's total liability to Customer for a breach of any Non-excludable Condition (except whereby 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.

8. 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.

9. Neither party may commence any claim or proceedings against Synergy for any liability under or in connection with this Agreement outside of the Maximum Claim Period provided under this clause 15.

16. TERMINATION AND SUSPENSION

1. A party ("Terminating Party") may immediately terminate this Agreement on written notice to the other party ("Terminated Party") if:
   a. Terminated Party materially breaches this Agreement, and fails to remedy that breach within 14 days after receiving notice requiring it to do so;
   b. Terminated Party commits any act of bankruptcy or insolvency or an order is made for the bankruptcy or winding up of Terminated Party or a resolution is passed for the winding up of Terminated Party otherwise than for the purposes of amalgamation or reconstruction;
   c. Terminated Party enters into a compromise arrangement with creditors;
   d. a receiver or official manager of Terminated Party or of any material part of its assets, is appointed;
   e. a Force Majeure event causes a suspension of a party's material obligations for a period of more than thirty (30) days.

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 18.
   g. Customer is subject to any event referred to in clause 17.5 (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.

17. 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 in accordance with clause 4 of this Agreement.

3. If Customer terminates any Service or this Agreement or if Synergy terminates the Agreement under clause 16, 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 or 18 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 authorised by this 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. During the Term, 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.

18. ASSIGNMENT

1. Subject to clause 23, a party may not assign, sub-license, transfer or otherwise dispose of any rights or sub-contract, transfer, delegate or otherwise dispose of any obligations under this Agreement except with the prior written approval of the other party. A party ("Assignor") may however assign, sub-license, transfer to or otherwise dispose of all of its rights and all of its obligations under this Agreement to any affiliate, provided that the financial standing and creditworthiness of such affiliate is not less sound than that of the Assignor.

19. 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. If sent by email, at the time of sending.

20. 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 through mediation. 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 Zealand.

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

21. NON-SOLICITATION

1. During the Term, and for a period of six (6) months thereafter, neither party shall on its own behalf or on behalf of any person directly or indirectly entice or endeavour to entice away from the other party any employee or contractor of such other party. Notwithstanding the foregoing, either party may hire any such employee or contractor who independently seeks employment through normal channels or who responds to a general solicitation conducted in the ordinary course of business (such as an advertisement in a trade journal or an independent and non-directed solicitation by a third-party employment recruiter who approaches such employee on a wholly unsolicited basis). In the event a party does employ any of the other party's current or former employee or contractor who was at any time during the Term involved in the performance of this Agreement, the party so hiring shall make payment to the other party, by way of liquidated damages, an amount equal to the annualized base compensation and benefits at which the hiring party hired such individual, and shall make the payment therefor to the other party within thirty (30) calendar days of the date of receipt of the invoice for such payment.

2. Where during the period specified in clause 21.1 any employee or contractor to whom that clause relates seeks to be employed by the other party, that other party shall promptly so advise the first party.

3. Synergy will ensure that all of its employees or subcontractors engaged to supply the services under this Agreement shall be suitably qualified for performance of the duties allotted to them.

22. 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 thirty (30) 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.

23. SUBCONTRACTING

1. Synergy may not subcontract or partner with a provider to deliver any part of this Agreement without the prior written consent of Customer, which shall not be unreasonably withheld.

2. Synergy is fully responsible for its obligations under this Agreement even if it has subcontracted all or any part of such obligations under this clause 23.1 and is liable for all acts and omissions of its subcontractors, and the acts and omissions of

those employed or engaged by the subcontractors, as if such acts and omissions were performed by Synergy itself.

24. Synergy Product

1. In respect of any Synergy Product and Third Party Product supplied as part of the services delivered by Synergy to the customer under this agreement, the Customer acknowledges and agrees that:

   a. the Synergy Product 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 Product greater than a mere right to use the Synergy Product in conjunction with the provision of the Services by Synergy and as directed by Synergy;

   b. the Third Party Product 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 Product;

   c. it will abide by and comply with any terms and conditions notified to the Customer prior to the use of the Third Party Product relating to the use of the Third Party Product as required by the supplier of that Third Party Product (other than Synergy);

   d. the Customer must not sell, assign, charge or create any sub-lease or otherwise dispose of or abandon the Synergy Product or Third Party Product, nor allow the Synergy Product or Third Party Product 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 Product or Third Party Product unless with Synergy's express consent;

   f. the Customer shall not knowingly 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 Product or Third Party Product;

   g. the Customer shall be responsible for any damage under its control to the Synergy Product and Third Party Product 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 Product and Third Party Product whilst at a Site is effectively protected and secured against the threat of any Loss;

   i. the Customer must not allow the Synergy Product or Third Party Product 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 Product is installed by Synergy or the relevant third party; and

   j. The Customer will not be granted any right to use the Synergy Product or Third Party Product, 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 Zealand 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 a party 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 clause which, by its nature, ought to survive the termination of this Agreement survives including without limitation clauses 7, 10, 11-16, 18, 21, 22, 24 and 25.