SYNERGI SOFTWARE LTD
TERMS AND CONDITIONS
Definitions of the Agreement

1.1
The referral to these words in the Terms and Conditions shall have the following meanings:

Case – A request for service made by the customer under the terms of the Contract.

Change Request – written request to change the Scope or Project Plan.

Charges – The fees payable by the Customer for Synergi to provide the Support Service.

Contract – The contract between the Customer and Synergi for the supply of Support Services, Services or Goods.

Customer – The person accepting the Synergi’s quotation and Terms for the supply of any Support Services, sale of goods or sale of services.

Documentation - documents or on-line help that may be provided in electronic media or printed media relating to the Software supplied.

Equipment - any computer infrastructure or computer software relevant to the agreement.

Goods – computer hardware or software to be supplied to the Customer within the terms of the agreement.

Initial Term – The first period for which the Service will be provided.

Personnel – Employees, consultants, sub-contractors or agents of the Customer or Synergi.

Project Plan – The plan outlining the estimated delivery of the services and associated responsibilities.

Quotation – The Synergi proposal of Services to the Customer.

Renewal Term – The period of Service after the Initial Term and every subsequent period of Service.

Schedule of Cover – The schedule listing the Equipment under cover.

Scope – Detailed explanation of the Services.

Service Definition – The definition of the Support Service the Customer will receive.

Service Location - The agreed location(s) where the Support Services will be provided as set out in the Schedule of Cover or agreed in writing.

Service Hours – The period the Support Service will be available as shown in the Service Definition.

Services – The services shown in the Synergi quotation and related documentation that the Customer has contracted Synergi to provide.

Support Services – The support service to be provided to the Customer on the Equipment listed in the Schedule of Cover in the manner shown in the Service Definition.

Synergi – Synergi Software Limited.

Third Party – Any party other than the Customer or Synergi.

Third Party Software - Software that is owned by a party other than the Customer or Synergi.

Third Party Software Licence Agreement - The licence entered into between the Customer and a Third Party in respect of any Third-Party Software.

User Acceptance Sign off – Confirmation by the Customer that the System meets the specification.

User Acceptance Tests – Tests undertaken by the Customer to confirm the system meets the specification.

Working Day – A 7-hour day worked between 9.00am and 5.00pm, Monday to Friday, excluding all Bank/Public Holidays.

2

General Provisions

2.1

Agreement

2.1.1 This agreement sets out the basis in which Synergi will trade with the Customer for the supply Goods, Services and Support Services. The agreement will prevail over any other documents or terms and conditions submitted by the customer or referred to by the Customer in anyway and supersedes any and all prior agreements verbal or written.

2.1.2 These Terms may only be varied in writing by a Director or other authorised representative of Synergi and your organisation, any amendment in terms will need to be notified at least 14 days in advance to your organisation and mutually approved in advance by both parties, your organisation reserves the right to terminate the contract if amended terms cannot be mutually agreed.

2.1.3 The headings in these Terms are to provide assistance and shall have no effect on the interpretation.
2.1.4 Failure by either party to enforce any rights allowed under these Terms will not be construed as a waiver the rights, any single or partial exercise of the Terms will not preclude any further or subsequent exercise.

2.1.5 The invalidity or unenforceability of any part of these Terms will not prejudice the continuation in force of the remainder of these Terms.

2.1.6 The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

2.1.7 Any person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999.

2.1.8 These Terms will be governed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.

2.1.9 The Customer agrees that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision unless set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the extent permitted by law, nothing in these Terms will affect the liability of Synergi for any fraudulent misrepresentation.

2.2 Notices

2.2.1 All notices under these Terms must be in writing and will be effective only if served by either party at their last known principal place of business or such other place as that party has nominated in writing.

2.3 Data Protection

2.3.1 Each party will ensure that in the performance of its obligations under these Terms will at all times comply with the Data Protection Act 1998.

2.3.2 The Customer consents to the processing by Synergi of the Customer’s personal data for purposes connected with these Terms (‘personal data’ is defined in the Data Protection Act 1998).

2.3.3 The Customer acknowledges that any data transmitted over the Internet or other transmission by electronic means cannot be guaranteed free from the risk of interception, whether encrypted or not and that Synergi has no liability for the loss, corruption or interception of any such data.

2.4 Sub-Contracts
2.4.1 Synergi may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time, however assignments or intended assignments need to be notified at least 14 days in advance to your organisation and mutually approved in advance by both parties.

2.4.2 This Contract is personal to the Customer. The Customer may not assign or make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of Synergi.

2.4.3 No person will become entitled to confer any rights on any third parties by virtue of this Agreement, the application of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

2.5 Confidentiality

2.5.1 Each party shall take all reasonable steps to ensure that the other’s Confidential Information to which it has access is not disclosed or distributed by its Personnel.

2.5.2 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

2.6 Payment

2.6.1 If no specific payment terms have been agreed in writing then payment by the Customer will be made within 30 days after the date of Synergi’s invoice.

2.6.2 If payments from the Customer are due in instalments, the Customer will pay such instalments in advance by direct debit or by such method as agreed with Synergi at pre-agreed intervals.

2.6.3 If payments from the Customer are due for Subscription Services, the Customer will pay such payment in advance by direct debit or by such method as agreed with Synergi.

2.6.4 If the Customer fails to make any payment due to Synergi on its due date then Synergi may (without prejudice to any other remedy) cancel the Contract, suspend any Service or suspend any obligations by Synergi to the Customer.

2.6.5 The Customer shall not be entitled to withhold payment of any amount due to Synergi by reason of any set-off, counterclaim, abatement or similar deduction.

2.6.6 Synergi reserves the right to charge interest on overdue accounts at a rate of 4% over the base rate of Barclays Bank Plc from time to time from the due date for payment until receipt of the full amount and shall accrue at such rate after as well as before any judgement.
2.7 Liability

2.7.1 Except in the case of death or personal injury caused by Synergi's negligence, Synergi or its Personnel will not be liable to the Customer for any loss of profits or revenue, business interruption or loss of business information, or anticipated savings, goodwill or any type of special, indirect, incidental, consequential, exemplary or punitive damages whether arising from failure to meet any duty owed to any person including of good faith, reasonable care or negligence, strict liability, breach of contract or misrepresentation or otherwise howsoever arising (including loss or damage suffered by the other as a result of any action brought by a third party) even if such loss was reasonably foreseeable or a party has been advised of the possibility of such loss or damage in advance.

2.7.2 Except in the case of death or personal injury caused by Synergi’s negligence, notwithstanding the provisions of clauses 2.7.1 the absolute total liability of Synergi for any Loss suffered by the Customer as a result of such failure to provide the Services will not exceed the lower of the value of the charges paid by the Customer in respect of the Services or £10,000.

2.7.3 Except in the case of death or personal injury caused by Synergi’s negligence, or liability no action regardless of form may be brought by the Customer more than 12 months after the cause of action.

2.7.4 Synergi will have no liability under these Terms or otherwise to the Customer arising out of:

2.7.4.1 any corruption or loss of any documents, configurations, data, or computer storage medium occurring by the Customer’s failure to maintain adequate back-up copies of all of its software including operating systems, applications software and data files;

2.7.4.2 any corruption or loss of any documents, data, or computer storage medium which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of Synergi for whatsoever reason;

2.7.4.3 any act or omission of any Third-Party provider, or fault or failure of their equipment or service.

2.7.5 In the case of any damage to any program or data files of the Customer, covered under this Contract, then Synergi’s responsibility is confined to assisting the Customer to restore the latest copy of the backup routines.

2.8 Customer Warranty

2.8.1 The Customer warrants that the use of any data, materials or equipment supplied by the Customer for use by Synergi, will not infringe the Intellectual Property Rights or Software Licence of any third party and the Customer will indemnify Synergi against any claim.
2.9
Non-solicitation

2.9.1 The Customer agrees not to knowingly solicit or entice away directly or indirectly any Synergi personnel on its own behalf or on behalf of a third party. In the case of a breach the customer agrees to pay Synergi a fee equal to 12 months of the sums to be paid to such person(s).

2.10
Value Added Tax

2.10.1 Prices are exclusive of Value Added Tax or other Government imposed excises or taxes (if any). These shall be paid by the Customer at the rate and in the manner as prescribed by law.

2.11
Data Backups & Security

2.11.1 The Customer is responsible to, in a manner acceptable to Synergi, take and verify back up routines, maintaining all backups in a secure manor and provide copies to Synergi when required in the execution of their obligations under these Terms.

2.11.2 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and data from viruses, harmful code or unauthorised access. Synergi shall not be responsible for any unauthorised access to the Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate any offence or unauthorised modification of Equipment by a third party.

2.12
Termination

2.12.1 Synergi may without prejudice to any other remedy available give written notice to terminate or suspend this Contract or part of it if:

2.12.1.1 the Customer commits a breach of these Terms which is not remedied within thirty days of a written notice detailing the breach;

2.12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer other than for purpose of a bona fide reconstruction or amalgamation;

2.12.1.3 the Customer is subject to an administration order; a receiver, manager or administrative receiver is appointed to the Customer;

2.12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;

2.12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;
2.12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;

2.12.1.7 in the case of a sole trader or partnership anything similar to any of the above occurs.

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2.12.2 On termination of this Contract the Customer will return all Synergi's property in the Customers possession and delete any of Synergi's Confidential Information. Synergi will delete any of the Customer's Confidential Information and return to the Customer any property in its possession.

2.12.3 On termination of the Contract any Software Licence granted to the customer by Synergi will immediately terminate and the Customer will return to Synergi any such software and all copies thereof. The customer will undertake to remove all such software within 14 days of termination and confirm to Synergi in writing that the software has been removed from their systems and the customer will not use permit the use of any such software.

2.12.4 In the event of the Customer breaching their obligations under clause 2.12.3 the Customer acknowledges and agrees that Synergi will be entitled to remove such software from all of the Customers systems. The Customer agrees not to do or omit to do anything which might prevent or hinder such removal.

2.12.5 If the Customer terminates this Contract (or Synergi terminates by reason of any acts or omissions of the Customer) then:

2.12.5.1 In respect of Goods such termination can only be made with Synergi's written consent and on the following basis the Customer will indemnify Synergi against all loss (including loss of profit) costs, charges and expenses incurred.

2.12.5.2 In respect of Support Services, if the termination occurs prior to the end of the Initial Term or any Renewal Term, Synergi may without prejudice to any other remedies available to it demand and receive from the Customer reasonable early termination charges to cover costs incurred in delivering the service which have not been fully recovered by the Charges paid by the Customer.

2.12.5.3 In respect of Services, the Customer shall be liable for the full value of Synergi's charges set out in the Proposal as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs, disbursements and travelling expenses.

2.12.6 In the event of any termination of this Agreement the accrued rights or liabilities of either party shall not be affected either shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination.
2.12.7 After payment to a Third Party for applicable Software licence fees, termination of this Agreement will not necessarily mean termination of the Third-Party Software Licence Agreements which are subject to their own terms and conditions.

2.13
Health and Safety

2.13.1 The customer will ensure that Synergi Personnel while at the Customer’s premises, are conversant with the Customer’s premises and safety procedures in the interests of health and safety.

2.14
Intellectual Property Rights

2.14.1 All rights in any designs, configurations, developed software or modifications made to any software for the Customer in whatever form together with any associated documentation produced as part of the Contract shall be the property of Synergi and no title or ownership of the aforementioned will be transferred to the Customer unless both parties agree in advance of scope and delivery.

3
Sale of Goods - the terms and conditions in Part 3, apply to the sale of Goods by Synergi.

3.1.1 Synergi will sell and the Customer will buy the Goods in accordance with the Synergi quotation subject to these Terms.

3.2
Accuracy of Order

3.2.1 The Customer is responsible for ensuring the accuracy of the terms of any order including any applicable specification and suitability for the Customer’s requirement.

3.3
Delivery

3.3.1 Delivery of the Goods will take place to the place agreed in writing with the Customer. Deliveries may be made by instalments and these Terms will apply to each delivery.

3.3.2 Any dates and times are estimates only are not of the essence of the contract. No liability will be accepted by Synergi for any loss or damage (howsoever arising) to the Customer should Synergi be unable to deliver the Goods.

3.3.3 The customer undertakes to complete all required works at its own cost in preparation for delivery and/or installation of the Goods. If Synergi is delayed or prevented from completing the installation through no fault of its own then Synergi may recover from the Customer compensation for any losses incurred and/or reasonable costs to complete any necessary preparation works.
3.4

Transfer of Property and Risk

3.4.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until full payment has been received by Synergi.

3.4.2 Until title in the Goods has passed to the Customer, Synergi will be entitled at any time to require the Customer to return the Goods to Synergi and, if the Customer fails to do so enter any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

3.4.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as Synergi’s fiduciary agent and bailee, will not dispose of the Goods, keep the Goods separate from those of the Customer and any third parties, properly stored, protected and insured and identifiable as Synergi’s property.

3.5

Charges and Payment in respect of sale of Goods

3.5.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and Synergi and agreed at the point of order for the Goods.

3.5.2 Invoices for Goods will be issued on delivery of the Goods. If the Goods are specific to the Customer invoices may be raised when goods are available.

3.5.3 If the Customer fails to accept delivery of goods then Synergi may invoice the Customer at any time following an attempt to deliver or arrange delivery of Goods.

3.6

Warranty on goods

3.6.1 The Customer undertakes to use the Goods properly in accordance with the relevant manufacturer’s instructions.

3.6.2 Any Goods supplied are warranted free from defects for a period of 90 days from the date of delivery. The Customer must within the period of 90 days notify Synergi in writing of any defects and permit Synergi access to the Goods as required. If the Customer fails to notify Synergi then the Customer will not be entitled to reject the Goods and Synergi will have no liability for such defect.

3.6.3 Synergi will have no liability for Goods that have been repaired or modified by anybody other than Synergi or its agents.

3.6.4 Synergi may repair or replace Goods free of charge or refund the price of the Goods (or a proportionate part) in which case Synergi will have no further liability to the Customer.

3.7

Supply of Software
3.7.1 All Software, whether supplied, installed, implemented or provided as a subscription service is provided within the terms and conditions and licence of the software provider.

3.7.2 If the Software comprised in the Goods is owned by a Third Party then the Customer must enter into a Third-Party Software Licence Agreement with the owner of the software.

3.7.3 For Software developed for the customer by Synergi, a non-exclusive, non-transferable licence for the use of the Software for the duration of this Contract will granted to the customer subject to the customer making payment in full for all charges arising out of the Contract.

3.7.4 Where Software is written or developed for the Customer by Synergi, the Customer accepts that the software may only be compatible with the current versions of other software/hardware and no guarantee is provided that it will be compatible with future versions of other software/hardware. Unless the Customer has put in place the necessary arrangements with Synergi, there is no obligation on Synergi to supply updates or add-ons to the software.

4

Services - the terms and conditions in Part 4, apply to the sale of Services by Synergi.

4.1 Synergi will sell and the Customer will buy the Services in accordance with Synergi’s quotation subject to these Terms.

4.2

Synergi’s responsibilities:

4.2.1 Synergi will use reasonable efforts to provide the Services and to deliver to the Customer the System, in accordance with quotation and Specification (if any).

4.2.2 If required, Synergi will at its discretion, appoint a project manager to manage the delivery of the Services. The Project Manager will liaise with the Customer as required, from time to time it may be necessary to replace Project Managers.

4.2.3 If required, Synergi will at its discretion agree with the Customer a Project Plan for the delivery of the Services. Synergi will use reasonable efforts to meet any performance dates or Project Milestones specified in the Project Plan, but any such dates shall be estimates and not contractually binding.

4.3

The Customer’s responsibilities

4.3.1 Respond in a timely manner to requests for access to Personnel, information, data and documents.

4.3.2 When required appoint a suitable person or Project Manager with the authority to liaise with the Synergi and commit the customer to matters regarding the delivery of the Services.
4.3.2 If Synergi’s obligations under the Contract are delayed or prevented in any way by the Customer or their agents, the Customer shall be liable to pay to Synergi reasonable charges for losses incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to the costs being confirmed in writing to the customer.

4.4

Charges and payment

4.4.1 Charges for the services and expenses will be made in line with the agreed quotation or Synergi’s normal daily charges if no agreement has been made.

4.4.2 Daily rates are calculated based on Synergi’s Working Day and apply if undertaken on or off the Customers site. Where services are delivered outside Synergi’s normal Working Day, Synergi will advise the customer of the supplementary charges and expenses.

4.5

Change control

4.5.1 If Synergi or the Customer wishes to change the Scope or delivery of the Services then it shall advise the other party of the request in writing.

4.5.2 In the event of any Change Request, Synergi will advise in writing to the customer the implication of the proposed changes to the delivery of the Services, this may include further Scope, Quotation, and impact on the Project Plan.

4.5.3 Synergi will only proceed with the Change Requests after receiving the Customer’s written acceptance of the implications as a result of the change request.

4.6

Acceptance

4.6.1 The Customer agrees to carry out User Acceptance Tests as defined in the Project Plan and complete the necessary User Acceptance Sign Off within 1 working day of the completion of the User Acceptance Tests.

4.6.2 In the event of the System failing to pass the User Acceptance Tests the Customer will advise in writing to Synergi all issues within 2 working days of User Acceptance Tests.

4.6.3 If the Customer fails to complete the User Acceptance Tests as laid down in the Project Plan and these Terms then User Acceptance Tests will be deemed to have occurred satisfactorily and Synergi will raise any invoices due which will be paid by the Customer in line with the Terms of the contract.
Support Services - the terms and conditions in Part 5, apply to the provision of Support Services by Synergi.

5.1.1 Synergi, subject to these Terms, will use reasonable endeavours to provided Support Services and respond to valid Cases and rectify defects or malfunctions on the Equipment described in the Schedule of Cover in accordance with the Service Definition.

5.1.2 The time taken to respond to a Case will only be measured during the Service Hours.

5.1.3 Permanent replacement equipment, either new or refurbished, may be used to achieve resolution, on exchange that part becomes the property of the Customer, and the faulty part becomes the property of Synergi.

5.1.4 Equipment may be repaired away from the Service Location when necessary.

5.1.5 If the Service Definition provides Loan Equipment (when available) during the period repairs are undertaken. The Loan Equipment remains the property of Synergi and will be returned by the customer on request. The Customer will take responsibility of the equipment and will indemnify Synergi in respect of any loss or damage to that equipment.

5.1.6 Synergi may use new releases, patches and updates of Third Party Software to rectify known problems where this is permitted under the applicable Third-Party Software Licence Agreement. The Customer will not inhibit Synergi in the installation of updates to remedy defects or malfunctions.

5.1.7 Any work on Equipment outside of the Schedule of Cover or outside the Service Definition will be chargeable at Synergi’s current rates.

5.2 Term

5.2.1 Support commences on the Agreement Start Date in the Schedule of Cover, subject to these Terms, and will continue thereafter until either party serves at least one month’s written notice of termination on the other, expiring on the last day of the Initial Term or the last day of any following Renewal Term.

5.3 Charges and Payment

5.3.1 The Charges quoted in the Schedule of Cover for the Support Services are for the Initial Term only. The Customer will be notified of the Charges applicable to any Renewal Term 45 days prior to the start of the Renewal Term.

5.3.2 Support charges for the Initial Term are due prior to the Agreement Start Date, or within 30 days of the date of Synergi’s invoice, whichever is earlier

5.3.3 Support Charges for any Renewal Term are due 15 days prior to the commencement of any Renewal Period.
5.4  

**Customer’s Responsibilities**

5.4.1 The Customer will keep and operate the Equipment in accordance with the manufacturer’s specification.

5.4.2 The Customer will ensure that the Equipment is operated by properly trained staff in accordance with the manufacturer’s instructions.

5.4.3 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment that may be reasonably required to remedy defects or malfunctions.

5.4.4 The Customer will provide full and free access to the Equipment and the Customer’s Personnel to allow Synergi to undertake diagnosis and/or repair of the Equipment.

5.4.5 Where required the Customer will put and keep in place a remote access link to the Equipment which is acceptable to Synergi and provide Synergi access for the purpose delivering support. The Customer will be responsible for the full costs of the link. Synergi will not be liable for any loss suffered if for any reason the remote access link is unavailable for any period of time.

5.4.6 The Customer will advise in writing if any of the Equipment is changed or re-located.

5.4.7 If Equipment has been replaced or moved the Customer will be responsible for charges arising from configuration/reconfiguration of any Equipment that has been replaced, moved or damaged during any move.

5.4.8 The customer is responsible for the cost of any Third-Party Software upgrades which Synergi recommend.

5.5  

**Exclusions**

5.5.1 The support service does not extend to:

5.5.1.1 any Equipment not included in or changed from that detailed in the Schedule of Cover;

5.5.1.2 any Equipment which was, in Synergi’s reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of the Support Service;

5.5.1.3 any work arising by a breach of these Terms by the Customer;

5.5.1.4 any work arising from any incident, wilful act, error or omission in the operation of the Equipment which is not due to the neglect or default of Synergi;

5.5.1.5 any failure or defect caused by Equipment not covered by these Terms;

5.5.1.6 failures or defects due to manufacture or design defects;

5.5.1.7 refurbishment or repair of casings or outer surfaces;
5.5.1.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Schedule of Cover;

5.5.1.9 reinstatement of customised versions of the standard desktop/operating system;

5.5.1.10 reinstatement of the Customer’s software and data not identified within the Schedule of Cover;

5.5.1.11 any consultancy, training or other Services;

5.5.1.12 removal of viruses and spyware or resolution of the consequences of such;

5.5.1.13 incompatibilities in hardware and/or software;

5.5.1.14 upgrading the operating platform and software applications;

5.5.1.15 consumable items such as, but not limited to, magnetic media, batteries, print heads, toner cartridges, ink, paper, cables;

5.5.1.16 any Equipment in respect of which a notice has been served;

5.5.1.17 any work arising by reason of any work by a third party;

5.5.1.18 any services which are specifically excluded in the Service Definition.

5.6

Beyond Economic Repair

5.6.1 If any part of the Equipment is identified as “end of life” or becomes beyond reasonable repair or spare parts are not readily available or is no longer economically viable to maintain or requires upgrading or updating Synergi will advise the Customer in writing of possible options. Synergi may on written notice exclude such equipment and return to the customer by way of credit a reasonable portion of any charges.