

# SYNERGIST CLOUD SUBSCRIPTION TERMS AND CONDITIONS

PLEASE READ CAREFULLY BEFORE PROCEEDING WITH YOUR ORDER AND SUBMITTING A SIGNED PROPOSAL.

BY SIGNING AND SUBMITTING THE PROPOSAL YOU AGREE TO FORM A LEGALLY BINDING CONTRACT WITH SYNERGIST IN ACCORDANCE WITH THESE TERMS AND CONDITIONS. IF YOU DO NOT WISH TO ENTER INTO A CONTRACT WITH SYNERGIST PLEASE DO NOT SIGN AND SUBMIT THE PROPOSAL.

Please retain a copy of these Terms and Conditions for future reference.

## 1 Definitions and Interpretation

1.1 The definitions and rules of interpretation set out in this Condition 1 apply to the Subscription Agreement:

<b>Additional User Request</b>	has the meaning set out in Condition 3.1;
<b>Applicable Law</b>	all applicable laws, statutes, regulations and codes from time to time in force;
<b>Approved Synergist Implementation Partner</b>	those persons listed as such (which may be amended by Synergist from time to time) at <a href="https://www.synergist.co.uk/resources/implementing-synergist">https://www.synergist.co.uk/resources/implementing-synergist</a>
<b>Associate</b>	in respect of either Party, a Subsidiary or Holding Company of that Party or a Subsidiary of such Holding Company, in each case for the time being;
<b>Authorised Users</b>	those persons to whom the Customer has issued log in details;
<b>AWS</b>	Amazon Web Services, Inc.;
<b>Back-up Policy</b>	the policy available at <a href="https://synergist.co.uk/synergist-cloud-backup-policy">https://synergist.co.uk/synergist-cloud-backup-policy</a> or such other website address as may be notified to the Customer by Synergist from time to time;
<b>Business Day</b>	any day other than a Saturday, Sunday or public holiday in England when banks in the City of London are open for business;
<b>Business Hours</b>	9.00 am to 5.30 pm on Monday to Thursday (inclusive) and 9.00am to 5.00pm (GMT) on Fridays on any Business Day;
<b>Charges</b>	any and all fees, charges and interest payable by the Customer to Synergist under and/or in connection with the Subscription Agreement;
<b>Chosen Hosting Location</b>	the location where Customer Data is stored as part of the Hosting and Data Storage, which is procured by Synergist and located either in the UK or in the EEA, as selected by the Customer on entry into the Subscription Agreement;
<b>Commencement Date</b>	the date that the Proposal, signed and submitted by or on behalf of the Customer, is accepted by Synergist;
<b>Confidential Information</b>	any and all information of whatever nature disclosed directly or indirectly (whether before or after the date of the Subscription Agreement and whether given in writing, verbally or by any other means) by a Party to the other Party, including any information relating to its business affairs, customers, clients, suppliers, operations, plans or intentions, products and services including

databases, software, internet and website products and services, technical information and data, financial information, business strategies, marketing and promotional information, analyses, documents, data, formulae, processes, designs, know-how, trade secrets and Intellectual Property Rights, which information is designated in writing to be confidential or proprietary, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary;

<b>Control</b>	has the meaning given to it in section 1124 Corporation Tax Act 2010;
<b>Customer</b>	the person, firm or company named as such in the Proposal;
<b>Customer Comms Links</b>	any and all information technology communication links required by the Customer to facilitate its access to the Services;
<b>Customer Data</b>	any Data inputted by the Customer, Authorised Users or Synergist on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;
<b>Customer Personal Data</b>	any personal data comprised in the Customer Data which Synergist processes in connection with the Subscription Agreement in the capacity of a processor on behalf of the Customer;
<b>Customer Environment</b>	the environment from which the Customer accesses and uses the Services, including the Customer Comms Links;
<b>Data</b>	data of any form, nature or structure, that can be created, uploaded, inserted in or derived from or with the Services including proprietary and non-proprietary data, confidential and non-confidential data, non-personal and personal data as well as other human readable or machine readable data;
<b>Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications);
<b>Data Storage Area</b>	the Customer's designated storage area, procured by Synergist;
<b>Documentation</b>	any document(s) made available to the Customer by Synergist via the Customer's account, <a href="https://www.synergist.co.uk">https://www.synergist.co.uk</a> , or such other web address notified by Synergist to the Customer from time to time, which sets out a description of the Services and the Authorised User instructions for the Services;
<b>Force Majeure Event</b>	any cause preventing either Party from performing any or all of its obligations under and/or in connection with the Subscription Agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of that Party, including strikes, lockouts or other industrial disputes (whether involving the workforce of that Party or otherwise), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm or default of suppliers or sub-contractors;

<b>Holding Company</b>	has the meaning given to it in section 1159 Companies Act 2006 and shall include parent and subsidiary undertakings as defined in section 1162 Companies Act 2006;
<b>Hosting and Data Storage</b>	the hosting and data storage services to be procured by Synergist;
<b>Hosting and Data Storage Provider</b>	AWS or any other provider of Hosting and Data Storage that Synergist may engage in connection with the Subscription Agreement from time to time;
<b>Hosting and Data Storage Provider Terms</b>	AWS' standard terms and conditions from time to time, the current version of which can be found at <a href="https://aws.amazon.com/legal/">https://aws.amazon.com/legal/</a> or the applicable terms of any other Hosting and Data Storage Provider engaged by Synergist in connection with the Subscription Agreement from time to time;
<b>Initial User Subscriptions</b>	the number of User Subscriptions to be purchased by the Customer at the Commencement Date, as set out in the Proposal;
<b>Initial Subscription Term</b>	the period from the Commencement Date and ending on the expiry of 12 calendar months from and including the month in respect of which the first invoice is issued to the Customer in accordance with Condition 12.4;
<b>Intellectual Property Rights</b>	any and all copyrights, moral rights, related rights, patents, supplemental protection certificates, petty patents, utility models, trade marks, trade names, service marks, design rights, database rights, website rights, semi-conductor topography rights, domain name rights, rights in undisclosed information or Confidential Information, rights in get up, goodwill or to sue for passing off, unfair completion rights, and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;
<b>Minimum Monthly Charge</b>	means the minimum monthly charge applicable to a given Subscription Tier;
<b>Party</b>	a party to the Subscription Agreement and <b>Parties</b> shall be construed accordingly;
<b>Proposal</b>	Synergist's written subscription proposal for the Customer which includes details of the Services;
<b>Reduction Request</b>	has the meaning set out in Condition 3.1;
<b>Relevant Law</b>	means: <ul style="list-style-type: none"> <li>(a) any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being to which a Party is subject;</li> <li>(b) the common law as applicable to the Parties (or any one of them);</li> <li>(c) any binding court order, judgement or decree applicable to the Parties (or any one of them); and</li> <li>(d) any applicable industry code, policy, guidance, standard or accreditation terms,</li> </ul>

- (i) enforceable by law which is in force for the time being; and/or
- (ii) stipulated by any regulatory authority to which either Party is subject,

in each case, for the time being;

<b>Services</b>	the subscription services provided by Synergist to the Customer under the Subscription Agreement via <a href="https://synergist.cloud">https://synergist.cloud</a> or any other website notified to the Customer by Synergist from time to time, as more particularly described in the Documentation, together with those other services set out in the Proposal that are to be supplied directly by Synergist to the Customer, including any Support;
<b>SLA</b>	the service level agreement available at <a href="https://synergist.co.uk/synergist-cloud-service-level-agreement">https://synergist.co.uk/synergist-cloud-service-level-agreement</a> (which may be amended from time to time);
<b>Software</b>	the online software applications provided by Synergist as part of the Services, hosted by a Hosting and Data Storage Provider, as set out in the Proposal;
<b>Special Conditions</b>	any special conditions agreed between the Parties and set out in the Proposal;
<b>Subscription Agreement</b>	the Proposal, these Terms and Conditions and the SLA (if applicable), which may be amended from time to time;
<b>Subscription Tier</b>	a certain level of functionality, Services and Support subscribed to by the Customer, further details of which are available via <a href="https://www.synergist.co.uk/software-pricing">https://www.synergist.co.uk/software-pricing</a> , as may be updated by Synergist from time to time;
<b>Subsidiary</b>	has the meaning given to it in section 1159 Companies Act 2006 and shall include parent and subsidiary undertakings as defined in section 1162 Companies Act 2006;
<b>Support</b>	the support services to be provided by Synergist from time to time, as further described in the Proposal;
<b>Synergist</b>	means Synergist Express Limited (no. 04697775) a company incorporated in England whose registered office is at Kay Johnson Gee, 100 Barbirolli Square, Manchester, M2 3BD;
<b>Term</b>	the period from the Commencement Date until expiry or termination of the Subscription Agreement in accordance with Condition 17;
<b>Terms and Conditions</b>	means the terms and conditions set out in this document, which may be updated by Synergist from time to time;
<b>Upgrade Request</b>	has the meaning set out in Condition 3.5;
<b>User Subscriptions</b>	the user subscriptions purchased by the Customer, which entitle Authorised Users to use the Services and the Documentation in accordance with the Subscription Agreement, being, as at the Commencement Date, the Initial User Subscriptions and as the same may be updated from time to time in accordance with Condition 3.4;

<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
<b>Year</b>	the period of 12 calendar months from the Commencement Date and each subsequent consecutive period of 12 months during the Term;
<b>Zendesk</b>	Zendesk, Inc., a third party provider of the ticketing system used by Synergist to provide Support to the Customer.

1.2 Headings used in the Subscription Agreement shall not affect the interpretation of the same.

1.3 A reference in the Subscription Agreement to:

1.3.1 a **person** shall include an individual, company, limited liability partnership, corporate firm, partnership, joint venture, association, trusts or unincorporated bodies and associations (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns;

1.3.2 the **singular** shall include the plural and vice versa;

1.3.3 a **statute** or **statutory** provision is a reference to it as amended, extended or re-enacted from time to time;

1.3.4 **writing** or **written** includes e-mail but not fax;

1.3.5 **Conditions** are to the conditions of these Terms and Conditions;

1.3.6 **include, including** and in **particular** or anything similar are illustrative only and none of them shall limit the sense of the words preceding or following them and each of them shall be deemed to incorporate the expression **without limitation**.

## 2 User Subscriptions

2.1 Subject to the Customer subscribing and paying for the User Subscriptions in accordance with Conditions 3.4 and 12.1, the restrictions set out in this Condition 2, the other Conditions and any Special Conditions, Synergist hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Term solely for the Customer's internal business operations.

2.2 If the Customer wishes to allow an Associate to access and use the Services and the Documentation, the Customer:

2.2.1 shall submit a prior written request to Synergist providing details of such Associate, and Synergist shall evaluate such request and notify the Customer of its approval or rejection of the same (at its sole discretion) within 10 Business Days' from the date it receives such request. For the avoidance of doubt, if the Subscription Tier subscribed to by the Customer does not permit multiple members of a corporate group of companies to access and use the Services and the Documentation, any such request will be automatically rejected;

- 2.2.2 if Synergist approves the request made under Condition 2.2.1, the Customer shall:
- (a) pass a copy of the Terms and Conditions to the Associate and shall obtain a written agreement (in the form required by Synergist) from an authorised signatory of the Associate that it has received a copy of the Terms and Conditions and that it will observe and perform the obligations of the Customer under the Terms and Conditions as if it were a party to it as the Customer, acknowledges the terms upon which the Customer is granted its right under the Subscription Agreement and grant third party rights under the Contract (Rights of Third Parties) Act 1999 entitling Synergist to enforce such agreement;
  - (b) provide a copy of the agreement to Synergist as soon as possible upon its receipt of the same; and
  - (c) ensure, procure and guarantee that the Associate shall comply with the provisions of the Terms and Conditions as if it were a party to it as the Customer.
- 2.3 For the avoidance of doubt:
- 2.3.1 the Customer shall, without prejudice to Conditions 2.2.2(c) and 11.1.5, be responsible for the Associate's access to and use of the Services and Documentation;
  - 2.3.2 the Customer shall not allow any access and/or use of the Services and Documentation to the Associate prior to its compliance with Conditions 2.2.2(a) and 2.2.2(b);
  - 2.3.3 the Customer shall continue to make User Subscriptions change requests (including an Additional User Request) in accordance with Condition 3;
  - 2.3.4 if an Associate ceases to be an Associate of the Customer, it shall no longer have the right to access or use the Services and Documentation; and
  - 2.3.5 an Associate may not enforce the terms of the Subscription Agreement against Synergist and save for the right to access and use the Services and Documentation they shall have no rights or benefits pursuant to the Subscription Agreement.
- 2.4 In relation to the Authorised Users, the Customer undertakes that:
- 2.4.1 the maximum number of Authorised Users that it authorises to access and use the Services and Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
  - 2.4.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - 2.4.3 each Authorised User shall keep a secure log-in and password for their access and use of the Services and Documentation, and each Authorised User shall keep his password confidential.
- 2.5 The Customer agrees that it shall not authorise any person to access or use the Services and/or Documentation:
- 2.5.1 unless such person is an employee of the Customer;
  - 2.5.2 unless such person is an Associate and the Customer and the Associate have complied with their respective obligations under Condition 2.2;

- 2.5.3 unless such person is a third party engaged by the Customer on a temporary basis or for a particular project and such person is required to provide additional business capacity for the Customer.
- 2.6 The Customer shall permit Synergist to audit the Customer and Authorised Users' (including Associates) use of the Services in order to establish the name, employment status and validity of each Authorised User and the Customer's compliance with the terms of the Subscription Agreement. Such audit may be conducted no more than once per quarter, at Synergist's expense, and this right shall be exercised with reasonable prior notice, and in such a manner as not to substantially interfere with the Customer's normal conduct of business.
- 2.7 If any audit performed in accordance with Condition 2.6 reveals that:
  - 2.7.1 any log-in and/or password has been provided to any individual other than in accordance with Condition 2.4.3 then without prejudice to Synergist's other rights and remedies, the Customer shall promptly disable such log-in and/or password and shall not issue any new log-in and/or password to any such individual; and/or
  - 2.7.2 the Customer has underpaid any Charges, then without prejudice to Synergist's other rights and remedies, the Customer shall pay to Synergist an amount equal to such underpayment, as calculated by Synergist based on difference between the number of User Subscriptions the Customer has paid for over the relevant period and the highest number of User Subscriptions actually used by the Customer during the relevant period (provided always that the value shall never be less than zero), with such additional User Subscriptions being charged at Synergist's then current rate per additional User Subscription, within 10 Business Days of the date of the relevant audit.

### **3 Changes to User Subscriptions and Subscription Tier upgrades**

- 3.1 **User Subscriptions.** The Customer may request to amend the number of Authorised Users permitted to access and use the Services and Documentation by submitting a written request to Synergist stating that it wishes to:
  - 3.1.1 increase the then current number of User Subscriptions (each an **Additional User Request**); or
  - 3.1.2 reduce the then current number of User Subscriptions (a **Reduction Request**),in accordance with Conditions 3.2 to 3.4 below.
- 3.2 Each Additional User Request or Reduction Request shall include details of how many User Subscriptions are required or the number of User Subscriptions that are no longer required, as applicable.
- 3.3 Synergist shall evaluate each Additional User Request or Reduction Request and notify the Customer in writing of its approval or rejection of the same within 2 Business Days from the date it receives such request. Any Reduction Request will automatically be rejected if it would result in the monthly Charges falling below any applicable Minimum Monthly Charge for the relevant Subscription Tier currently subscribed to by the Customer.
- 3.4 If the Additional User Request or Reduction Request is approved:
  - 3.4.1 if the increase or reduction in User Subscriptions will take effect during a quarter in respect of which:
    - (a) an invoice has already been raised, Synergist will raise an additional invoice or

credit (as applicable) in respect of that given quarter; or

- (b) an invoice has not already been raised, the relevant increase or reduction shall be applied to the invoice; and

3.4.2 for the avoidance of doubt, with effect from the following quarter, Synergist shall be entitled to collect the amended Charges on an on-going monthly basis by direct debit.

3.5 **Subscription Tier upgrade.** The Customer may request to upgrade to a higher Subscription Tier by submitting a written request to Synergist (**Upgrade Request**). Each Upgrade Request must detail which Subscription Tier the Customer wishes to upgrade to. The Customer shall not be permitted to downgrade to a lower Subscription Tier.

3.6 Synergist shall evaluate each Upgrade Request and notify the Customer in writing of its approval or rejection of the same within 5 Business Days from the date it receives such request.

3.7 If, at the point of receiving the Upgrade Request, Synergist determines that the Customer's monthly Charges are typically below the minimum applicable to the Subscription Tier it has requested to upgrade to, Synergist will notify the Customer of the increase in Minimum Monthly Charges that will apply. The Customer may withdraw its request to upgrade within 5 Business Days of receiving such information, otherwise the increase in Minimum Monthly Charges shall take effect from the date that the Subscription Tier upgrade takes effect.

3.8 If the Customer's upgrade request is approved:

3.8.1 if the upgrade will take effect during a quarter in respect of which:

- (a) an invoice has already been raised, Synergist will raise an additional invoice in respect of that given quarter; or
- (b) an invoice has not already been raised, the relevant increase shall be applied to such invoice; and

3.8.2 for the avoidance of doubt, with effect from the following quarter, Synergist shall be entitled to collect the amended Charges on an on-going monthly basis by direct debit.

#### 4 Services

4.1 Synergist shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of the Subscription Agreement.

4.2 Synergist shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 maintenance carried out between the hours of 12 midnight to 5.00 am (GMT); and

4.2.2 any other (unscheduled) maintenance, provided that Synergist has used reasonable endeavours to provide the Customer with prior notice if reasonably possible.

4.3 Synergist will, as part of the Services, provide the Customer with Support during Business Hours. The Customer may purchase enhanced support, training, system configuration and/or report writing services separately either directly from Synergist or from an Approved Synergist Implementation Partner at then current rates.



## **5 Service Availability**

- 5.1 If the Customer is subscribed to the Enterprise Subscription Tier, the SLA shall also form part of the Subscription Agreement.

## **6 Hosting and Data Storage**

- 6.1 The Customer agrees and acknowledges that Synergist shall engage a third party to host the Software. The Customer acknowledges that the Software is currently hosted by AWS. Synergist may elect to change Hosting and Data Storage Provider at any time at its absolute discretion. Synergist will provide the Customer with notice of any such change if it is reasonably practicable to do so.

- 6.2 Synergist shall provide the Hosting and Data Storage to the Customer on the following basis:

6.2.1 subject to and in accordance with the applicable Hosting and Data Storage Provider Terms, which shall apply as between Synergist and the Customer mutatis mutandis;

6.2.2 Synergist shall use reasonable endeavours to enforce the Hosting and Data Storage Provider Terms against the Hosting and Data Storage Provider including taking reasonable steps to require the Hosting and Data Storage Provider to restore the Hosting and Data Storage in the event of interruption or failure;

6.2.3 Synergist shall immediately notify the Customer in writing if it becomes aware of any facts or circumstances that constitute (or may constitute):

(a) a failure on the part of the Hosting and Data Storage Provider to provide the Hosting and Data Storage; or

(b) a breach of the Hosting and Data Storage Provider Terms;

6.2.4 in the event of a breach by the Hosting and Data Storage Provider of the Hosting and Data Storage Provider Terms, Synergist shall take such action under the Hosting and Data Storage Provider Terms as the Customer reasonably requests in respect of such breach;

6.2.5 the Customer shall only be entitled to recover losses or damages from Synergist for a failure to provide the Hosting and Data Storage or a breach of the Hosting and Data Storage Provider Terms if and to the extent that Synergist has been able to recover such losses or damages from the Hosting and Data Storage Provider, having used reasonable endeavours to do so.

- 6.3 The Customer warrants and undertakes to Synergist that it shall comply with the applicable Hosting and Data Storage Provider Terms and shall indemnify and keep Synergist fully indemnified and hold Synergist harmless against any claims, damages, losses, liabilities, costs and expenses (including reasonable legal fees) arising out of or relating to any breach by the Customer of the Hosting and Data Storage Provider Terms, provided that Synergist:

6.3.1 gives notice to the Customer of any suspected breach of this Condition 6.3 upon becoming aware of the same;

6.3.2 to the extent that it is permitted to do so in accordance with the terms of its agreement with the Hosting and Data Storage Provider and such action would not be to the detriment of Synergist's own defence to such claim or action, shall give the Customer appropriate conduct of the defence to any claim or action in respect of a breach by the Customer of its obligations set out in this Condition 6.3; and

6.3.3 to the extent that it is permitted to do so in accordance with the terms of its agreement

with the Hosting and Data Storage Provider and that such actions would not be to the detriment of Synergist's own defence to such claim or action, shall act in accordance with the reasonable instructions of the Customer and gives to the Customer such assistance as it shall reasonably require in respect of the conduct of said defence including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents.

- 6.4 The Customer agrees to provide to Synergist and/or the Hosting and Data Storage Provider such information or materials relating to the Customer Data as reasonably requested by Synergist and/or the Hosting and Data Storage Provider to verify the Customer's compliance with the Hosting and Data Storage Provider Terms.
- 6.5 The Customer shall ensure that it maintains at its own cost the continuous operation of the Customer's Comms Links during the Term. The Customer acknowledges and accepts that, whilst Synergist may provide advice as to how the requirements for the Customer's Comms Links might be met, Synergist shall have no responsibility or liability for the selection, installation, operation, security, maintenance or suitability of the Customer's Comms Links or the Customer's Environment.
- 6.6 The Customer shall promptly report to Synergist any failure or likely failure of the Customer's Comms Links of which it becomes aware.
- 6.7 Synergist agrees to use its reasonable endeavours to utilise such support as is made available to it by its Hosting and Data Storage Provider.
- 6.8 In addition to any other rights set out in the Subscription Agreement, Synergist shall have the right to suspend the Customer's access to the Software immediately upon notice to the Customer if Synergist or the Hosting and Data Storage Provider determines that:
- 6.8.1 the Customer's use of the Software or Services poses a security risk to the Hosting and Data Storage Provider, Synergist or any other third party; and/or
  - 6.8.2 the Customer is in breach of the Hosting and Data Storage Provider Terms.
- 6.9 If Synergist suspends the Customer's right to use all or any part of the Services, the Customer shall remain responsible for Charges:
- 6.9.1 incurred during such suspension; and
  - 6.9.2 for in-progress tasks completed after the date of such suspension.
- 6.10 Synergist's right to suspend access to or use of the Services is in addition to its right to terminate the Subscription Agreement in accordance its terms.

## **7 Customer Data**

- 7.1 The Customer (or its Associate, if any) shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 7.2 Synergist shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy, which may be amended by Synergist from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Synergist to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Synergist in accordance with the archiving procedure described in its Back-Up Policy. Synergist shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Synergist to perform

services related to Customer Data maintenance and back-up).

- 7.3 The Customer agrees and acknowledges that Synergist or the Hosting and Data Storage Provider may immediately remove any Customer Data from the Data Storage Area that breaches any Relevant Law, the terms of the Subscription Agreement, or the Hosting and Data Storage Provider Terms, or which the Hosting and Data Storage Provider requests that Synergist removes.

## **8 Data Processing Terms**

- 8.1 In this Condition 8, the terms **controller, data subject, personal data, personal data breach, processor and processing** shall have the meanings given to them in the Data Protection Legislation.

- 8.2 The Parties shall each comply with their respective obligations under the Data Protection Legislation. This Condition 8 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

- 8.3 The Parties have determined that, for the purposes of the Data Protection Legislation, Synergist shall process the Customer Personal Data as processor on behalf of the Customer. Should this determination change, the Parties shall use all reasonable endeavours to make any changes that are necessary to this Condition 8.

- 8.4 Where Synergist processes personal data as a controller in connection with this Subscription Agreement, it shall process the personal data in accordance with the terms of its privacy notice in force from time to time.

- 8.5 In relation to the Customer Personal Data, Condition 8.12 sets out the scope, nature and purpose of processing by Synergist, the duration of the processing and the types of personal data and categories of data subject.

- 8.6 Without prejudice to the generality of Condition 8.2, the Customer shall procure and ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Customer Personal Data to Synergist and/or the lawful collection of the personal data by Synergist on behalf of the Customer for the duration and purposes of the Subscription Agreement.

- 8.7 Without prejudice to Condition 8.2, Synergist shall, in relation to the Customer Personal Data:

8.7.1 only process the Customer Personal Data for the purpose set out in Condition 8.12 of this Subscription Agreement and not for any other purpose unless Synergist is acting on the written instructions of the Customer or where otherwise required to do so by the Data Protection Legislation. Where Synergist is relying on Applicable Law as the basis for processing Customer Personal Data, it shall notify the Customer of this before performing the processing required by the Applicable Law (unless prohibited by such Applicable Law). Synergist shall inform the Customer if, in Synergist's opinion, the Customer's instructions infringe Applicable Law;

8.7.2 ensure that it has in place appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, destruction or damage appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data; ensuring the confidentiality, integrity, availability and resilience of its systems and services; ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 8.7.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - 8.7.4 at the Customer's expense, assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 8.7.5 notify the Customer without undue delay on becoming aware of a personal data breach;
  - 8.7.6 at the Customer's written direction, delete or return the Customer Personal Data and copies thereof to the Customer unless required by Applicable Law to store the Customer Personal Data; and
  - 8.7.7 maintain complete and accurate records and information to demonstrate its compliance with this Condition 8.
- 8.8 In relation to the Customer Personal Data, Synergist may appoint and replace sub-processors (including AWS, Zendesk and any other third party provider of support services) as third party processors of the Customer Personal Data under the Subscription Agreement. Synergist shall enter into a written agreement substantially on that third party's standard terms of business which Synergist undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation.
- 8.9 In relation to the Customer Personal Data, Synergist may transfer the Customer Personal Data outside the UK where its sub-processors are based outside of the UK. The Customer acknowledges that where it provides Customer Personal Data when raising a support ticket for assistance or using an available support chat facility (for example, by sending a screenshot of an issue which contains Customer Personal Data), Synergist will transfer, and Zendesk will receive and process, such Customer Data. For the avoidance of doubt, Customer Personal Data which has been input into the Synergist cloud shall not be transferred outside of the UK where the Chosen Hosting Location is the UK, or, where the Chosen Hosting Location is the EEA, the EEA.
- 8.10 Synergist shall not transfer Customer Personal Data outside of the UK save for in the limited circumstances described in Condition 8.9, or where the Chosen Hosting Location is the EEA. In such circumstances, Synergist shall transfer any personal data in accordance with the Data Protection Legislation to ensure that at least one of the following safeguards is implemented: (i) the transfer is to a country deemed to provide an adequate level of protection for personal data; or (ii) there are appropriate contractual safeguards in place for the transfer of personal data; or (iii) binding corporate rules are in place; or (iv) one of the derogations for specific situations applies to the transfer.
- 8.11 Without prejudice to the generality of any other provisions of the Terms and Conditions, Synergist may revise this Condition 8 by replacing it with any applicable controller to processor standard clauses or similar terms from time to time (which shall apply when replaced by attachment to the Subscription Agreement).
- 8.12 Details of the scope, nature and purpose of processing of the Customer Personal Data:

<b>Subject matter and duration of the processing</b>	<p>The Customer Personal Data which is provided by the Customer to Synergist in connection with the performance of the Services and/or Subscription Agreement.</p> <p>Synergist shall only process the Customer Personal Data for as long as is required to comply with the Subscription Agreement or where it is required to store the Customer Personal Data to comply with Applicable Laws or for</p>
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	regulatory purposes.
<b>Nature and purpose of the processing</b>	Processing of the Customer Personal Data in order to perform the Services and/or the Subscription Agreement.
<b>Type of personal data</b>	The Customer Personal Data may include names, email addresses, IT system or account log in details, IP addresses, and such other personal identifiers and Data relating to data subjects whose details may be provided (or made available) to Synergist by the Customer in connection with the performance of the Subscription Agreement.
<b>Categories of data subjects</b>	Individuals whose details may be provided (or made available) to Synergist by the Customer in connection with the performance of the Subscription Agreement.

## 9 Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Synergist makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Synergist. Synergist recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Synergist does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 10 Synergist's obligations

10.1 Synergist undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

10.2 The undertaking set out in Condition 10.1 shall not apply to the extent that a breach of Condition 10.1 arises as a result of or in connection with any:

10.2.1 use of the Services by the Customer other than in accordance with the terms of the Subscription Agreement or Synergist's instructions; or

10.2.2 modification or alteration of the Services by any party other than Synergist or the Synergist's duly authorised contractors or agents.

10.3 Subject to Condition 10.2, if the Services are not provided in accordance with Condition 10.1, Synergist will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Condition 10.1.

10.4 The Customer acknowledges and accepts that:

- 10.4.1 Synergist does not warrant that use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained through the Services will meet requirements;
  - 10.4.2 Synergist is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - 10.4.3 computers need routine maintenance and sometimes break down and that the Services may not operate continuously and in an error-free manner and that, as a result, Synergist does not guarantee to anyone that the Customer or any other third parties will be able to access the Services at any particular time and the Customer agrees that Synergist shall have no liability if any such persons are not able to access the Services at all times;
  - 10.4.4 computer software, including that provided via the Services, is not error, fault or bug free, nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt computer systems and that the Data, information and records they display, retrieve, collate, transfer, calculate or disseminate may be affected by such occurrences, and the Customer agrees that, subject to Synergist providing Support on the terms of the Subscription Agreement, Synergist shall have no liability to the Customer nor to any other third party for any such occurrences arising in respect of or in relation to the Services.
- 10.5 The Subscription Agreement shall not prevent Synergist from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided pursuant to the Subscription Agreement.
- 10.6 Synergist warrants that it has and will maintain all necessary licences, consents, and permissions necessary to enable it to provide the Services.
- 10.7 Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the Services and the Support are hereby excluded to the fullest extent permitted by law.

## **11 Customer's obligations**

- 11.1 The Customer shall:
- 11.1.1 co-operate with Synergist on all matters relating to the Subscription Agreement and the provision of the Services;
  - 11.1.2 provide Synergist with access to all information as may be required by Synergist in order to provide the Services including Customer Data, security access information and configuration services;
  - 11.1.3 comply with all Relevant Law with respect to its activities under the Subscription Agreement;
  - 11.1.4 carry out all other Customer responsibilities set out in the Subscription Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Synergist may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 11.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with the Subscription Agreement and shall be responsible for any Authorised User's breach

of the Subscription Agreement;

- 11.1.6 obtain and maintain all necessary licences, consents, and permissions required by it to allow the Authorised Users to receive the Services and enjoy the benefit of the Subscription Agreement;
  - 11.1.7 ensure that the Customer Environment, its network and systems comply with the relevant specifications set out at <https://www.synergist.co.uk/support/technical-specification> (which may be amended by Synergist from time to time); and
  - 11.1.8 be solely responsible for procuring and maintaining the Customer Comms Links, its network connections and telecommunications links from its systems to Synergist's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's Comms Links, network connections or telecommunications links or caused by the internet.
- 11.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material (including Customer Data) during the course of its use of the Services that:
- 11.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 11.2.2 facilitates illegal activity;
  - 11.2.3 depicts sexually explicit images;
  - 11.2.4 promotes unlawful violence;
  - 11.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
  - 11.2.6 in a manner that is otherwise illegal or causes damage or injury to any person or property; or
  - 11.2.7 violates the Hosting and Data Storage Provider Terms,
- and Synergist reserves the right, without liability or prejudice to its other obligations to the Customer, to suspend and/or disable the Customer's access to any material that breaches the provisions of this Condition 11.2.
- 11.3 The Customer shall not:
- 11.3.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties:
    - (a) and except to the extent expressly permitted under the Subscription Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means;
    - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
    - (c) access or allow a third party to access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;

- (d) use the Services and/or Documentation to provide services to third parties;
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under Condition 2;

11.3.2 access or use the Services in breach of the Hosting and Data Storage Provider Terms.

11.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Synergist.

## **12 Charges and payment**

12.1 The Customer shall pay Synergist the Charges in accordance with this Condition 12.

12.2 The Customer shall subscribe to a particular Subscription Tier and Minimum Monthly Charges shall apply. The Charges are set out at <https://www.synergist.co.uk/software-pricing>.

12.3 The Customer shall on the Commencement Date provide to Synergist relevant, valid, up-to-date and complete contact and billing details.

12.4 Synergist shall invoice the Customer on a three-monthly basis, commencing with the month following the month in which the Customer is granted access to the Services or such later date that the Parties shall agree for the Charges payable in respect of the relevant 3 month period during the Term. Invoices shall be payable in 3 equal monthly instalments by direct debit on the dates set out in the invoice or the nearest Business Day to such dates.

12.5 If Synergist has not received payment within 7 Business Days after the due date, and without prejudice to any other rights and remedies of Synergist:

12.5.1 Synergist may, without liability to the Customer, disable the Customer's and Authorised Users' log-in, password, account and access to all or part of the Services and Synergist shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

12.5.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the Bank of England's base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

12.6 All amounts and fees stated or referred to in the Subscription Agreement:

12.6.1 shall be payable in pounds sterling;

12.6.2 are non-cancellable and non-refundable;

12.6.3 are exclusive of value added tax or any other applicable sales tax, which shall be added to Synergist's invoice(s) at the appropriate rate.

12.7 If, at any time whilst using the Services, the Customer exceeds the amount of data storage space specified in the Proposal, Synergist shall charge the Customer, and the Customer shall pay, Synergist's then current Charges for such excess data and storage.



12.8 Subject to Condition 17.6, Synergist shall be entitled to increase the Charges once in each Year by giving the Customer 90 days' prior written notice. Synergist agrees not to increase the Charges during the Initial Subscription Term.

### **13 Proprietary rights**

13.1 The Customer acknowledges and agrees that Synergist and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, the Subscription Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

13.2 Synergist confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Subscription Agreement.

### **14 Confidentiality and compliance with policies**

14.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under the Subscription Agreement. A Party's Confidential Information shall not be deemed to include information that:

14.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;

14.1.2 was in the other Party's lawful possession before the disclosure;

14.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;

14.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or

14.1.5 is required to be disclosed by Relevant Law, by any court of competent jurisdiction or by any regulatory or administrative body.

14.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by Relevant Law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Subscription Agreement, save that in the case of Synergist, the Customer agrees that its Confidential Information can be disclosed to the Hosting and Data Storage Provider.

14.3 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 employees or agents in violation of the terms of the Subscription Agreement.

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

14.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Synergist's Confidential Information.

14.6 Synergist acknowledges that the Customer Data is the Confidential Information of the Customer.

14.7 No Party shall make, or permit any person to make, any public announcement concerning the Subscription Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by Relevant Law, any governmental or

regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

## **15 Indemnity**

15.1 The Customer shall defend, indemnify and hold harmless Synergist against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

15.1.1 the Customer is given prompt notice of any such claim;

15.1.2 Synergist provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

15.1.3 the Customer is given sole authority to defend or settle the claim.

15.2 Synergist shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

15.2.1 Synergist is given prompt notice of any such claim;

15.2.2 the Customer provides reasonable co-operation to Synergist in the defence and settlement of such claim, at Synergist's expense; and

15.2.3 Synergist is given sole authority to defend or settle the claim.

15.3 In the defence or settlement of any claim, Synergist may procure the right for the Customer to continue using the Services and/or Documentation, replace or modify the Services and/or Documentation so that they become non-infringing, or, if such remedies are not reasonably available, terminate the Subscription Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

15.4 In no event shall Synergist, its officers, directors, employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

15.4.1 a modification of the Services or Documentation by anyone other than Synergist; or

15.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Synergist; or

15.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Synergist or any appropriate authority.

15.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Synergist's (including Synergist's officers', directors', employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **16 Limitation of liability**

16.1 The following provisions set out the entire financial liability of Synergist (including any liability for the acts and omissions of its officers, directors, employees, agents and sub-contractors) to the Customer

in respect of:

- 16.1.1 any breach of the Subscription Agreement howsoever arising;
  - 16.1.2 any use made by the Customer of the Services, the Documentation or any part of them; and
  - 16.1.3 any misrepresentation, mis-statement or tortious act or omission (including negligence but excluding any of the same made fraudulently) arising under or in connection with the Subscription Agreement.
- 16.2 Any act or omission on the part of Synergist or its officers, directors, employees, agents or sub-contractors falling within Condition 16.1 shall for the purposes of this Condition 16 be known as an Event of Default.
- 16.3 Notwithstanding anything to the contrary in the Subscription Agreement, the liability of Synergist to the Customer for fraud, death or personal injury resulting from its own negligence or that of its officers, directors, employees, agents or sub-contractors or fraud for fraudulent misrepresentation shall not be limited.
- 16.4 Except as expressly and specifically provided in the Subscription Agreement:
- 16.4.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Synergist shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Synergist by the Customer in connection with the Services, or any actions taken by Synergist at the Customer's direction; and
  - 16.4.2 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 16.5 Subject to Condition 16.3, the total liability of Synergist in respect of all Events of Default in any Year shall be limited to damages of an amount equal to:
- 16.5.1 £1 million in respect of damage or loss to the tangible property of the Customer due to an Event of Default; and
  - 16.5.2 in respect of any other damage or loss, 125% of the amount of the Charges that have been paid to Synergist in the immediately preceding Year or in the first Year the expected Charges for that Year based on the applicable Subscription Tier (and any additional Authorised Users).
- 16.6 Subject to Condition 16.3, Synergist shall not be liable to the Customer in respect of any Event of Default for any loss or damage which may be suffered by the Customer (or any person claiming through or under the Customer) whether the same are suffered directly or indirectly and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which falls within the following categories:
- 16.6.1 loss of profits;
  - 16.6.2 loss of turnover;
  - 16.6.3 loss of anticipated savings;
  - 16.6.4 loss of business opportunity;
  - 16.6.5 loss of goodwill;

16.6.6 loss or corruption of data or information;

16.6.7 damage to reputation;

16.6.8 any special, indirect or consequential loss,

provided that this Condition 16.6 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the provisions of Condition 16.5 or any other claim for direct financial loss that are not excluded by Condition 16.6.1 to 16.6.8 (inclusive).

16.7 Subject to Condition 2, the Parties acknowledge and agree that any loss or damage suffered by an Associate as a result of its use of the Services and/or Documentation will be treated as having been suffered or incurred by the Customer, and may be recoverable (where such loss is recoverable under the Subscription Agreement) by the Customer from Synergist as if and only to the extent that it were a loss or damage suffered or incurred by the Customer and recoverable by the Customer under the Subscription Agreement.

16.8 If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Subscription Agreement.

16.9 Synergist shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Synergist within 3 months of the date the Customer became aware or ought to have become aware of the consequences of the Event of Default.

## **17 Term and termination**

17.1 The Subscription Agreement shall, subject to Conditions 17.2 to 17.4 (inclusive), commence on the Commencement Date and shall continue for the Initial Subscription Term and shall continue thereafter unless or until terminated by either Party giving to the other not less than 3 months' written notice to terminate the Subscription Agreement, such notice to terminate on or after the date of the expiry of the Initial Subscription Term. Synergist shall have the right to restrict, suspend or terminate the Customer's use and access to the Services and/or Support immediately on expiry or termination of the Subscription Agreement (howsoever arising).

17.2 If the Customer fails to pay any Charges within 7 Business Days of their due date for payment or if Synergist is otherwise entitled to terminate the Subscription Agreement in accordance with Conditions 17.3 or 17.4, Synergist shall have, without prejudice to any of its other rights and remedies, the option, at its sole discretion, by giving written notice to the Customer, to immediately:

17.2.1 restrict or suspend the Customer's access to the Services and/or the provision of the Support until such Charges, together with accrued interest payable thereon, have been received in clear funds by Synergist; or

17.2.2 terminate the Subscription Agreement.

17.3 Either Party may immediately terminate the Subscription Agreement by giving the other Party written notice if:

17.3.1 the other Party commits any material breach of any provision of the Subscription Agreement and, in the case of a material breach capable of remedy, fails to remedy the same within 30 days of a written notice from the other Party giving particulars of the breach and requiring it to be remedied;

17.3.2 the other Party shall make a proposal for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the other Party shall be unable

to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other Party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or

- 17.3.3 in the circumstances set out in Condition 18.3.
- 17.4 Synergist may immediately terminate the Subscription Agreement by giving the Customer written notice of termination if (but without prejudice to Conditions 17.2 and 17.4):
  - 17.4.1 at any time Control of the Customer is acquired by a person or group of connected persons (as defined in the Corporation Tax Act 2010) not having Control of the Customer at the Commencement Date; or
  - 17.4.2 the Customer or its Associate (if any) commits a breach of the Hosting and Data Storage Provider Terms.
- 17.5 The Customer agrees to notify Synergist as soon as is reasonably practicable where an event referred to in Conditions 17.3 or 17.4 is likely to occur.
- 17.6 In the event that Synergist serves notice on the Customer of an increase in Charges in accordance with Condition 12.8, the Customer may terminate the Subscription Agreement by providing Synergist with at least 60 days' prior written notice, such notice not to expire prior to the date proposed for the increase in Charges.
- 17.7 If the SLA forms part of the Customer's Subscription Agreement, the Customer may terminate the Subscription Agreement in accordance with the terms of paragraph 8 of the SLA.
- 17.8 On expiry or termination of the Subscription Agreement for any reason:
  - 17.8.1 all licences and rights granted under the Subscription Agreement shall immediately terminate;
  - 17.8.2 each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party; and
  - 17.8.3 subject to clause 8.5.7 and clause 8.7, Synergist may destroy or otherwise dispose of any of the Customer Data in its possession unless Synergist receives, no later than 10 days after the date of the termination or expiry of the Subscription Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Synergist shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Synergist in returning or disposing of Customer Data.
- 17.9 Expiry or termination of the Subscription Agreement (howsoever arising), shall be without prejudice to any other rights or remedies a Party may be entitled to under the Subscription Agreement or at law and shall not affect the accrued rights, obligations or liabilities of either Party nor the coming into or continuance in force of any provision of the Subscription Agreement which is expressly or by implication, intended to come into or continue in force on or after such expiry or termination.

## **18 Force Majeure Event**

- 18.1 Neither Party shall be deemed to be in breach of the Subscription Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under the Subscription Agreement due to a Force Majeure Event.
- 18.2 If a Party's performance of its obligations under the Subscription Agreement is affected by a Force Majeure Event:
- 18.2.1 it shall give written notice to the other Party, specifying the nature and extent of the Force Majeure Event, immediately on becoming aware of the Force Majeure Event and will at all times use its reasonable endeavours to mitigate the severity of the Force Majeure Event;
  - 18.2.2 subject to Condition 18.3, the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event;
  - 18.2.3 it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.
- 18.3 If a Force Majeure Event continues for more than four weeks, then either Party shall be entitled to terminate the Subscription Agreement immediately on giving written notice to the other Party. Neither Party shall have any liability in respect of the termination of the Subscription Agreement as a result of a Force Majeure Event but such termination shall be without prejudice to accrued rights and remedies.

## **19 Warranties**

Except as expressly set out in the Subscription Agreement, all warranties, conditions, terms and undertakings, express or implied, statutory or otherwise are excluded from the Subscription Agreement to the fullest extent permitted by law.

## **20 Assignment**

- 20.1 The Customer shall not be entitled to assign, charge or otherwise transfer the Subscription Agreement nor any of its rights or obligations under the Subscription Agreement, sub-licence the right to use the Services or receive the Support or hold the benefit of the Subscription Agreement in trust for any other person without the prior written consent of Synergist.
- 20.2 Synergist shall be entitled to delegate and/or sub-contract any of its obligations under the Subscription Agreement to any Associate and in the case of the Hosting and Data Storage services, the Customer agrees that Synergist may delegate and/or sub-contract such obligations to the Hosting and Data Storage Provider on such terms as they require from time to time. Any such delegation or sub-contraction shall not affect the obligations and liability of Synergist under the Subscription Agreement.

## **21 Entire agreement**

- 21.1 The Subscription Agreement and any documents expressly referred to in it contains the entire understanding between the Parties in relation to its subject matter and supersedes all (if any) subsisting agreements, arrangements, understandings, negotiations, discussions or correspondence (written or oral, express or implied) relating to the same.
- 21.2 Each Party acknowledges that in entering into the Subscription Agreement it has not relied on any warranty, representation or undertaking (whether made innocently or negligently) which is not

contained in or specifically incorporated into the Subscription Agreement. Each Party agrees and acknowledges that its only remedy in respect of those representations, statements, assurances or warranties set out in the Subscription Agreement will be for breach of contract, in accordance with the terms of the Subscription Agreement, provided always that nothing in this Condition 21 shall exclude or limit the liability of a Party to the other Party for any fraudulent misrepresentation or warranty fraudulently given and upon which the other Party can prove it has placed reliance.

**22 Further assurance**

The Customer will at all times after date of the Subscription Agreement do and execute or procure to be done and executed all other necessary acts, deeds, documents and things to give effect to the Subscription Agreement.

**23 Costs and expenses**

Each Party shall pay the legal and other costs and expenses incurred by it in connection with the preparation, negotiation and completion of the Subscription Agreement and all ancillary documents.

**24 Modifications**

Synergist may make non-material changes to the Terms and Conditions and such other changes as permitted or as expressly provided for under the Subscription Agreement from time to time. Changes may be made to reflect changes in Relevant Law and regulatory requirements and to implement adjustments and/or improvements to the Services and/or Support. The date that the Terms and Conditions were last revised is stated at the bottom of this document. Save as set out above, no variation of the Subscription Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

**25 Third party rights**

No person other than a Party to the Subscription Agreement may enforce any of its terms under the Contract (Rights of Third Parties) Act 1999 or otherwise.

**26 Waiver**

A failure, delay or neglect by either Party to exercise any right or remedy or enforce any of the provisions of the Subscription Agreement shall not be construed or deemed to be a waiver or continuing waiver of that Party's rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**27 No partnership**

The Parties agree that nothing in the Subscription Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between them, constitutes any Party the agent of the other Party, nor authorises any Party to make or enter into any commitments for or on behalf of the other Party.

## **28 Severance**

- 28.1 If any of the provisions of the Subscription Agreement shall be declared invalid or unenforceable in whole or in part by any competent court or other authority whose decisions shall have the force of law binding on the Parties, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions shall not be affected.
- 28.2 If the invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and to that greatest extent possible achieves the Parties' original commercial intention.

## **29 Anti-bribery and anti-corruption compliance**

- 29.1 Each Party warrants the other Party that:
- 29.1.1 in the negotiation of the Subscription Agreement it has complied with all Relevant Law and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010;
  - 29.1.2 it has and will maintain in place at all times procedures under the Bribery Act 2010 to ensure continued compliance with the Bribery Act 2010 and will enforce those procedures where appropriate; and
  - 29.1.3 it will promptly report to the other Party any request or demand for or offer of any undue financial or other advantage of any kind received by it in connection with the Subscription Agreement.
- 29.2 The Parties agree that a breach of Condition 29.1 shall be deemed to be a material breach of the Subscription Agreement.

## **30 Modern Slavery Act**

Synergist warrants and represents to the Customer that it has and will maintain in place at all times procedures under the Modern Slavery Act 2015 to ensure its compliance with the Modern Slavery Act 2015 and will enforce those procedures where appropriate.

## **31 Governing Law and Jurisdiction**

- 31.1 The Subscription Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law.
- 31.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Subscription Agreement or its subject matter or formation (including non-contractual disputes or claims).

3<sup>rd</sup> November 2023