

## **PROVISION OF GOODS AND/OR SERVICES GENERAL TERMS AND CONDITIONS**

Unless otherwise specifically agreed in writing by **SYNAPSE IT CONSULTANTS PTY LTD ACN 106 329 417** of 305 High Street, Prahran in the State of Victoria (**Synapse**) and the Client named in the relevant Service Agreement, these terms and conditions are automatically incorporated into the terms of any Service Agreement or Scope of Works entered into by the parties, and combined with those documents, are the only terms and conditions on which Synapse will supply Services to the Client.

### **1. SERVICES AND PERFORMANCE STANDARDS**

1.1 Synapse will provide the Services for the Term to the Client, subject to payment by the Client of the Fee.

1.2 In providing the Services Synapse will:

- (a) conduct its business and carry out its obligations under this Agreement in a professional and proper manner in accordance with this Agreement and the Service Descriptions, such obligation including but not being limited to the provision of Services to a sufficient standard and in a timely manner as set out in the Scope of Works document agreed by the parties;
- (b) maintain confidentiality in respect of any business details given to it by the Client, and will not disclose any details of the Client to any third party (other than to its professional advisers or as may be required by law) without the Client's prior consent; and
- (c) ensure that its employees are appropriately trained and/or accredited, and sufficient in number, to enable it to perform its obligations in a timely manner.

### **2. PAYMENT FOR THE GOODS AND FEE FOR THE SERVICES**

2.1 The Client must pay the Fee, and all expenses properly incurred by Synapse in and associated with the performance of the Services, in accordance with the Trading Terms.

2.2 If the Client defaults in making payment of the Fee or any other amount due to Synapse under this Agreement, and such amount is not the subject of a dispute under clause 2.3 of this Agreement, Synapse may (without prejudice to its other rights) suspend provision of the Services until the default is remedied and the Client must pay, in addition to the amount due, interest at a rate per annum equal to 2% higher than the penalty interest rate under section 2 of the Penalty Interest Rates Act 1983 (Vic) computed from the date of the default until the date

payment is made. Synapse may recover the Fee together with all expenses, legal costs and all interest forthwith from the Client irrespective of any claim that the Client may have against Synapse for any thing or matter related to this Agreement.

2.3 If the Client, acting reasonably, wishes to dispute the charging of a Fee or a portion of a Fee, the Client:

- (a) must pay the undisputed amounts according to the payment terms; and
- (b) must, no later than 14 days after receipt of an invoice from Synapse, provide the Synapse accounts receivable department with written notification of the disputed amounts, along with a detailed explanation of the rationale for the dispute. The Client and Synapse shall then work collaboratively using good faith efforts to resolve the disputed figures.

### **3. SYNAPSE OBLIGATIONS**

3.1 During the Term Synapse:

- (a) must not solicit or entice any employee of the Client to leave his or her employment with the Client and work with or for Synapse (or a related person) whether during or for the period of 12 months after the expiry of the Term;
- (b) must perform its obligations and responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of the Client;
- (c) acknowledges that all intellectual property rights in any confidential information, documentation, software and other material proprietary to the Client vests exclusively in the Client, and Synapse must not infringe such rights or seek to exploit or use any such material for its own purposes other than as set out in this Agreement and this acknowledgement extends to the period after termination of this Agreement;
- (d) must not use any intellectual property rights of the Client, or describe any of the products or services of the Client, whether in printed material or on the internet or otherwise, without the prior written consent of the Client;

### **4. CLIENT OBLIGATIONS**

4.1 During the Term the Client:



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- (a) must not solicit or entice any employee of Synapse to leave his or her employment with Synapse and work with or for the Client (or a related person) whether during or for the period of 12 months after the expiry of the Term;
  - (b) must perform its obligations and responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of Synapse;
  - (c) acknowledges that all intellectual property rights in any confidential information, documentation, software and other material proprietary to Synapse vests exclusively in Synapse, and the Client must not infringe such rights or seek to exploit or use any such material for its own purposes other than as set out in this Agreement and this acknowledgement extends to the period after termination of this Agreement;
  - (d) must not use any intellectual property rights of Synapse, or describe any of the products or services of Synapse, whether in printed material or on the internet or otherwise, without the prior written consent of Synapse;
  - (e) unless otherwise agreed in writing by the parties, must only use any software or hardware provided by Synapse in the provision of the Services in accordance with the operating documentation provided by Synapse, and not allow any person other than Synapse access to such software or hardware provided by Synapse for any purpose without Synapse's prior written consent, which shall not be unreasonably withheld; and
  - (f) must make available any items referred to in a relevant Scope of Works document, its premises, equipment and staff to Synapse at all reasonable times and in a manner reasonably requested by Synapse to enable Synapse to provide the Services.
- 4.2 Synapse will not be liable to the Client for any delay in or failure to provide the Services where such delay or failure is directly or indirectly attributable to a breach by the Client of its obligations under this clause 4.
- 4.3 The Client authorises Synapse to take all reasonable steps to install goods on to the network of the Client, including accepting the 'shrinkwrap' terms and conditions of third party hardware, software and peripheral providers on behalf of the Client (and where reasonably possible, in the Client's name)."
- 5. DELIVERY AND INSPECTION OF GOODS**
- 5.1 The Client acknowledges that any delivery times for Goods indicated to it by Synapse, whether in this Agreement or otherwise, are estimates only and Synapse is not liable for late delivery or non-delivery. Synapse is not liable for any loss, damage or delay suffered by the Client or its customers arising out of late delivery or non-delivery.
- 5.2 The Client may inspect the Goods upon delivery and may reject within 7 days after delivery any Goods which the Client believes are not in accordance with this Agreement. Failure to reject Goods within this timeframe constitutes acceptance. The Client will not be liable to pay for any Goods which are not in accordance with this Agreement and which are rejected in accordance with this clause.
- 5.3 To the extent it is able to do so, Synapse passes on to the Client the benefit of any warranties received by Synapse from the manufacturer of the Goods.
- 6. PASSING OF PROPERTY AND RISK**
- 6.1 Synapse sells the Goods to the Client in accordance with the terms of the Service Agreement and this Agreement. Property and title in Goods supplied under this Agreement does not pass to the Client until payment in full by the Client is received by Synapse in relation to such Goods, until which time (subject always to clause 6.2):
- (a) the Client must not deal with any Goods to which Synapse retains property and title in accordance with this clause 6.1 ("Retained Goods") in any way inconsistently with either the rights and interests of Synapse as owner thereof or its rights and interests under clause 10 of this Agreement ; and
  - (b) the Client must hold the Retained Goods as fiduciary bailee and agent for Synapse, and the Client must store the Retained Goods in such separate place and in such manner such that the Retained Goods are capable of being clearly identified as the property of Synapse.
- 6.2 Upon demand by Synapse (which demand may be made at any time upon the Client defaulting in its obligations under clause 3.1), the Client must deliver all Retained Goods to Synapse or as otherwise directed by Synapse. Synapse may enter upon any premises under the Client's control for the purposes

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of recovering any Retained Goods the subject of a demand made in accordance with this clause and, in so entering upon such premises, Synapse and its authorised representatives will not be trespassers.

6.3 All risk in the Goods passes to the Client upon delivery of the Goods to the Client.

### 7. TERMINATION

7.1 Synapse may terminate this Agreement immediately by notice in writing if:

- (a) any payment due (and not the subject of a valid dispute in accordance with clause 2.3 of this Agreement) from the Client to Synapse pursuant to this Agreement remains unpaid for a period of 30 days or longer; or
- (b) the Client breaches a material term of this Agreement and the breach is not remedied within 30 days of written notice by Synapse to the Client;
- (c) the Client becomes subject to an Insolvency Event or any other form of insolvency administration;
- (d) the Client, being a natural person, dies or becomes bankrupt; or

7.2 The Client may terminate this Agreement immediately by notice in writing if:

- (a) Synapse breaches a material term of this Agreement and the breach is not remedied within 30 days of written notice by the Client to Synapse;
- (b) Synapse becomes subject to an Insolvency Event or any other form of insolvency administration (in which case Synapse agrees to use all reasonable endeavours to cooperate with and assist the Client to transition to an alternative service provider).

7.3 In the event Synapse, acting reasonably, issues a further Scope of Works notice to the Client, and such revised Scope of Works is rejected in writing by the Client, then, in addition to the revised Scope of Works being rejected, either party may elect to terminate this Agreement on the provision of 30 days written notice to the other party.

7.4 If a dispute regarding a Fee has been validly raised, and the parties have not been able to resolve, in accordance with the terms of this Agreement then either party may elect to immediately terminate this Agreement by notice in writing (with each party acknowledging and agreeing that the dispute in

relation to the Fee is not resolved as a result of the termination).

7.5 If notice of termination is given pursuant to this clause 7, in addition to terminating the Agreement and without prejudice to its other rights, Synapse:

- (a) may retain any moneys paid to it by the Client for Services or Goods supplied;
- (b) may charge the Fee and related expenses in respect of Services provided for which no sum has previously been charged;
- (c) may retake possession of all property of Synapse in the Client's possession (if any), including, but not limited to, all Synapse Confidential Information; and
- (d) will be regarded as discharged from any further obligations under this Agreement.

7.6 Where a party exercises its termination rights under clause 7, or upon expiry of the Term, the Client must provide Synapse with reasonable access to the Client's premises and any equipment upon which any software of Synapse is installed, to allow Synapse to retake possession of or uninstall such software, or the Client must deliver back any software directly to Synapse, whichever Synapse advises the Client by notice in writing.

7.7 Either party may terminate this Agreement at any time immediately if an order is made or resolution is passed or an application is filed for the winding up of the other party (otherwise for the purpose of reconstruction or amalgamation) or the other party goes into liquidation or has an administrator or receiver appointed.

7.8 Termination of this Agreement does not affect any provisions which are stated, or by their context require, to survive termination.

### 8. RIGHTS AND OBLIGATIONS ON TERMINATION

Any termination of this Agreement shall be without prejudice to any other rights or remedies of the parties.

### 9. LIABILITY OF SYNAPSE

9.1 Synapse is a service provider and cannot be held responsible for any problems, errors, faults or costs associated with software, hardware or systems manufactured or operated by third parties. Except as expressly provided to the contrary in this Agreement, to the maximum extent permitted by law all terms, conditions, warranties, undertakings, inducements or representations whether express or

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implied, statutory or otherwise relating in any way to the Goods and Services or to this Agreement are excluded.

9.2 Nothing in these terms and conditions is intended to exclude, restrict or modify rights which the Client may have under the ACL or otherwise which may not be excluded, restricted or modified by agreement. If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provisions in question shall not be affected.

9.3 In the event that Synapse supplies Goods in accordance with the relevant Services Agreement that are considered to be consumer goods under the ACL, those Goods are provided with the following warranty:

“Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.”

If you seek to claim under any warranty you must promptly provide a written statement of your claim to Synapse at the address noted within this Agreement along with a proof of purchase of the goods (such as an invoice or receipt) and allow Synapse to inspect the goods either on your premises, or by way of delivery of the goods back to Synapse for inspection at your cost. These warranties do not cover your cost of claiming under the warranty or the costs of recovery of the goods from your site.

9.4 In the event that Synapse is found to be in breach of any condition, warranty, representation, liability or obligation not excluded under clause 9.1 or not otherwise addressed by clause 9.3, the liability of Synapse in respect of such breach, will be limited at the option of Synapse to the following:

- (a) in relation to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again;
- (b) in relation to goods:

- (i) the replacement of the goods, or the supply of equivalent goods, or payment of the costs of replacing the goods or acquiring equivalent goods; or

- (ii) the repair of the goods or payment of the cost of having the goods repaired;

and in each case Synapse may make this election in its absolute discretion, subject always to the provisions of the ACL and to clause 9.5 of these terms and conditions.

9.5 If Synapse is held or found to be liable to the Client for any matter relating to or arising in connection with this Agreement, whether based on an action or claim in contract, negligence, tort or otherwise, the amount of damages the Client is entitled to recover from the Synapse will be limited to the amount of the Fee paid by the Client to that date relating to that matter.

### 10. PERSONAL PROPERTY SECURITIES

10.1 For the purpose of this clause:

- (a) ‘Attaches’ has the meaning given in section 19 of the PPS Act, and ‘Attached’ and ‘Attachment’ have the corresponding meanings;
- (b) ‘Collateral’ has the meaning given in section 10 of the PPS Act and refers to the Goods;
- (c) ‘Security Interest’ has the same meaning as in section 12 of the PPS Act; and
- (d) ‘Synapse’s Security Interest’ means the Security Interest contemplated by these terms and conditions.

10.2 The Client acknowledges:

- (a) that until title passes to the Client, Synapse has a Security Interest under and for the purposes of the PPS Act;
- (b) that Synapse may register the Synapse’s Security Interest on the PPS Register and the Client consents to such registration; and
- (c) that Synapse may register the Synapse’s Security Interest prior to the Attachment of the Synapse’s Security Interest to the Collateral;

10.3 The Client must do everything including signing all documents and giving all consents to

- (a) cause the Synapse’s Security Interest to attach to the Collateral as specified in the PPS Act;

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- (b) enable Synapse to register the Synapse's Security Interest within the time for so doing specified in the PPS Act;
- (c) enable Synapse to cure any defect in registration of the Synapse's Security Interest; and
- (d) enable Synapse to enforce the Synapse's Security Interest,

and the Client hereby appoints Synapse as the Client's attorney for each of those purposes;

**10.4 The Client must:**

- (a) not raise any objection to or seek to set aside or have set aside the registration of the Synapse's Security Interest unless and until the Client has fully discharged its obligations under or in respect of the Synapse's Security Interest and, generally, the relevant Service Agreement to which it relates;
- (b) not grant or cause or permit to be granted any further Security Interest in relation to the Collateral without Synapse's prior written consent; and
- (c) immediately notify Synapse upon the happening of any Insolvency Event.

**10.5** Synapse does not need to give the Client any notice under the PPS Act unless the notice is required by the PPS Act and that requirement cannot be excluded.

**11. CONFIDENTIALITY**

**11.1** The parties agree not to disclose at any time to any person without the prior written consent of the other party or unless required by law, whether during the Term or after its termination, any confidential information of the Client or Synapse.

**11.2** "Confidential Information" shall include, but not be limited to, any information or material whether in oral, visual or written form or recorded in any other medium, disclosed by a party to or observed from a part by, the other party, or which is treated or designated by a party as confidential, and including Synapse's software source code, object code, file layouts and interfaces, and documentation, and all discoveries, ideas, trade secrets, know how, concepts, drawings, specifications, techniques, models, data and voice communications, diagrams, client and supplier lists and other information pertaining to the business and pricing structures of a party. For the sake of clarification, any data generated by the Client in its use of the software

products, connections or networks provided by Synapse as part of the Services are considered the Confidential Information of the Client. Upon termination or the end of the term of this Agreement, Synapse must promptly return all Client Confidential Information in its possession except in circumstances where termination is due to Synapse exercising its rights under clause 7.1(a), in which case Synapse is obliged to return the Client Confidential Information only upon payment of all amounts owed by the Client under this Agreement.

**12. ASSIGNMENT**

Neither party may assign any of its interests, rights or benefits under this Agreement without the prior written consent of the other party, which consent must not be unreasonably refused or delayed.

**13. WHOLE AGREEMENT**

The relevant Service Agreement, Service Descriptions and this Agreement comprises the entire agreement between the parties in relation to the subject matter.

**14. FURTHER ASSURANCES**

Each party agrees to do all reasonable things and execute all deeds, instruments and other documents as may be necessary or desirable to render this Agreement binding on and legally enforceable against each party and to give full effect to the provisions of this Agreement and the actions contemplated by it.

**15. SEVERANCE**

Any provision of this Agreement which is void or unenforceable in Victoria may be severed from this Agreement without invalidating the remaining provisions of this Agreement.

**16. PROPER LAW**

This Agreement is governed by the laws of Victoria, Australia. The parties unconditionally submit to the jurisdiction of the courts of that State and all courts competent to hear appeals of the decisions of those courts.

**17. FORCE MAJEURE**

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If by any reason of any fact, circumstance, matter or thing beyond the reasonable control of a party, that party is unable to perform in whole or in part any obligation under this Contract, that party is relieved of that obligation under this Contract to the extent and for the period that it is so unable to perform and is not liable to the other party in respect of such inability.

### 18. RELATIONSHIP BETWEEN PARTIES

Synapse and the Client are independent parties and nothing in this Agreement constitutes a joint venture, partnership or agency.

### 19. GST

If any payment made by one party to any other party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Agreement.

### 20. DEFINITIONS

In this Agreement unless the context otherwise requires:

**ACL** means Schedule 2 (Australian Consumer Law) of the Competition and Consumer Act 2010 (Cth).

**Business Day** means a day on which trading banks are open for business in Melbourne, excluding a Saturday, Sunday or a public holiday;

**Fee** means the fee payable by the Client to Synapse for the Services and which is set out in the relevant Services Agreement;

**Goods** means the goods referred to in the relevant Services Agreement;

**GST** means any tax, levy, charge or impost implemented under the GST Law or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Law;

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**) and associated legislation and regulations;

**Insolvency Event** means anything that reasonably indicates that there is a significant risk that a party is or will become unable to pay its debts as they fall due, including:

- (a) The issue of a Statutory Demand in respect of the party;
- (b) A meeting of the party's creditors being called or held;
- (c) A step being taken to wind up the party;
- (d) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the party or any of its assets or such an appointment taking place; and
- (e) The party entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors.

**PPS Act** means the Personal Property Securities Act 2009 (Cth) and its regulations.

**Services** means the services Synapse has agreed to provide to the Client in accordance with the relevant Services Agreement;

**Service Descriptions** means the Metro, ADSL and/or VoIP Service Descriptions as provided on Synapse's website at <http://www.itconsultants.com.au/terms.html>

**Term** means the term of this Agreement as set out in the relevant Services Agreement.

**Trading Terms** means the Synapse payment terms, which are that the Client must pay invoiced amounts to Synapse within 30 days from the end of month after Synapse renders a tax invoice to the Client.