General Terms & Conditions

Background

A Synergy IT Group provides a range of information technology services ('IT services'), including:

- managed services; outsourced IT services; (incl Complete Care product);
- cloud services; (incl Infrastructure as a Service (IaaS) and Backup and Recovery as a Service (BRS) products);
- infrastructure services; systems integration; project services
- hardware and software procurement
- intranet solutions; application management; application development;
- telephony and unified communications

B These General Terms & Conditions set out the terms and conditions under which Synergy IT Group supplies these services.

Agreement

1. Parties

The parties are:

1.1. the Company named in a Synergy IT Group Service Agreement ('Synergy', 'us', 'we' or 'our'); and

1.2. the Client named in a Synergy IT Group Service Agreement ('you' or 'your').

2. General Terms & Conditions

These General Terms & Conditions apply to all IT services provided by us to you to the exclusion of any purchase order or other document submitted by you to us. For clarity any Voice or Data service that we supply to you are covered by a separate agreement.

3. Product Terms

3.1. The services that we are able to provide are described in the Schedule of fees.

3.2. Each of the Product Terms sets out:

3.2.1. the scope of the service;

3.2.2. the fees for the service; and

3.2.3. any special conditions that apply to the service.

4. Request for services

4.1. You may request a service by confirming the requirements in writing.

4.2. Each request

4.2.1. must clearly identify the service requested by reference to the Schedule of fees

4.2.2. must set out the required commencement date and term of the service;

4.2.3. must be completed by you accurately, with all required information; and

4.2.4. is a request for service and not a contract unless and until accepted by us.

5. Service Agreement

5.1. If we accept the request in writing, a binding contract is created ('Service Agreement') comprising:

5.1.1. the Schedule of fees, including any special conditions;

5.1.2. these General Terms & Conditions.

5.2. Each Service Agreement is an independent contract.

5.3. If there is any inconsistency between the parts of a Service Agreement, the order of priority, from highest to lowest, is:

5.3.1. any special conditions in the Schedule of fees;

5.3.2. these General Terms & Conditions.

6. Services

6.1. For each Service Agreement, we will provide you with the service specified in the relevant Schedule of fees ('the service').

7. Fees

7.1. The fees for a service are:

7.1.1. the fees specified in Schedule of fees

7.1.2. if none are specified, then current published fees for that service; or

7.1.3. if there are no current published fees, at our time and materials rates for similar services.

7.2. Except where we have agreed fixed fees for services, we may adjust our fees at any

time.

7.3. If we perform any work that is not covered by Schedule of fees, we may charge for that work:

7.3.1. at our current published rates for that type of work; or

7.3.2. if there are no current published rates, at our time and materials rates for similar work.

7.4. Unless we say otherwise in writing, when we use the term Monthly Base Fee this means the standard price contained in the Synergy Service agreement, excluding variations, usage, consumption, Excluded Item fees or set up fees.

8. Pre-paid fees

8.1. If Schedule of fees require fees to be pre-paid:

8.1.1. services will not be provided until you pay the pre-paid fees;

8.1.2. we may suspend providing a service if the balance of the pre-paid fees will not cover our fees for the service required; and

8.1.3. we may apply amounts you owe us against the balance of your pre-paid fees in any manner we decide.

8.2. Pre-paid fees are non-refundable.

9. Expenses

9.1. You must reimburse our out of pocket expenses provided:

9.1.1. the expenses have been approved in writing; and

9.1.2. we supply reasonable evidence substantiating the expense.

10. Invoicing and payment

10.1. We will invoice you:

10.1.1. in accordance with any payment schedule specified in the Service Agreement

10.1.2. otherwise:

10.1.2.1. monthly in advance for pre-paid fees; or

10.1.2.2. monthly in arrears.

10.2. You must pay each invoice in full:

10.2.1. by the due date specified in the invoice; or

10.2.2. if no due date is specified, within 14 days of the invoice date.

10.3. Late invoicing does not affect our right to payment or your obligation to pay.

10.4. If a payment is overdue, in addition to our other rights:

10.4.1. we may charge interest on the overdue amount at the Default Rate, calculated daily;

10.4.2. we may withhold providing services under any Service Agreement; and

10.4.3. you must indemnify us against all costs and expenses (including legal expenses on a solicitor / client basis) incurred by us in attempting to recover the overdue amount. 'Default Rate' means the overdraft reference rate quoted by our principal banker on the first day of the applicable month plus 2%.

10.5. If:

10.5.1. you fail to pay any amount (whether in whole or part) payable in respect of any hardware and/or Loan Equipment by the time required for payment;

10.5.2. you become insolvent (as that term is defined in the *Corporations Act 2001*); or

10.5.3. the Service Agreement between us is terminated, or becomes terminable atour option,

11. Third party charges

11.1. You are responsible for all third party charges incurred as a result of your use of the service (for example, telecommunications carriage fees) unless we specify otherwise in writing.

11.2. Where we specify that our fees include third party charges, we may increase our fees by written notice to you if there is an increase in third party charges.

12. GST

12.1. Terms in italics in this clause have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

12.2. Unless stated otherwise, fees stated under this agreement exclude GST.

12.3. The *consideration* payable by you under this agreement is the *value* of any *taxable*

supply for which payment is to be made.

12.4. Subject to us supplying you with a valid *tax invoice*, if we make a *taxable supply* in connection with a Service Agreement for a *consideration*, which represents its *value*, then you must pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

12.5. Subject to us supplying you with a valid *tax invoice*, if a Service Agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an*acquisition* of a *taxable supply* from a third party, the amount required to be paid, reimbursed or contributed by you will be the *value* of the *acquisition* by us less any *input tax credit* to which we are entitled plus, if our recovery from you is a *taxable supply*, any GST payable under clause 12.4.

13. Service delivery

13.1. We will provide the service:

13.1.1. during Business Hours, unless otherwise specified in writing;

13.1.2. at the location(s) specified in the Service Agreement or, if no location isspecified, at the location we determine to be most appropriate; and

13.1.3. with professional skill and care, using appropriately qualified personnel.

'Business Hours' means between 8:30 am and 5:30 pm, Monday to Friday excluding public holidays at the place in which the service is to be provided.

14. Access

14.1. You must provide us with reasonable and timely access to your facilities, premises, information, equipment, personnel, network and data to enable to fulfill our obligations under the Service Agreement.

14.2. We will not be responsible for any delay in providing a service where the delay results from your failure to provide timely access in accordance with clause 14.1.

15. Your obligations

15.1. You must:

15.1.1. comply with our reasonable and lawful directions in relation to the service;

15.1.2. provide a safe working environment for our personnel;

15.1.3. comply with all laws, regulations, policies and guidelines (including any acceptable use policy that we inform you of) applicable to the service;

15.1.4. ensure that any incumbent provider who is transitioning the service to us makes available the information, resources and facilities required by us to provide the service;

15.2. We will not be responsible for any failure, default or delay to the extent caused by your failure to perform your obligations under this clause.

16. Hardware supply

16.1. To the extent that the service is for the sale and supply of hardware:

16.1.1. the risk of loss of or damage to the hardware passes to you on delivery. Your obligation to insure hardware commences when risk passes to you. You must insure the hardware for its full value and ensure that our interest is noted on the policy. We may require you to demonstrate compliance with this clause including by producing a copy of the insurance policy;

16.1.2. we remain the legal and beneficial owner of all hardware sold by us to you under these General Terms & Conditions until all amounts due in respect of all hardware and any other amounts you owe us, actually or contingently presently or in
future, have been paid to us in cleared funds. This applies even if you install the hardware or commingle it with other goods.

16.1.3. you must not sell, dispose of, assign or encumber the hardware unless and until you have paid for it in full;

16.1.4. where the hardware manufacturer's warranty is capable of being assigned to you, it is the only warranty given in relation to the hardware, to the extent permitted by law;

16.1.5. where hardware is subject to export control laws or regulations (including

US export laws and regulations), you must not directly or indirectly export, re-export, distribute or otherwise act in violation of such laws and regulations; and

16.1.6. the United Nations Convention on Contracts for the International Sale of Goods does not apply.

17. Loan equipment

17.1. We may install on your premises, loan or otherwise provide you with equipment ("Loan Equipment"). All Loan Equipment:

17.1.1. remains our property;

17.1.2. must only be used by you for the purposes of receiving services from us; and

17.1.3. must be kept secured from loss or damage.

17.2. If Loan Equipment in your possession or control is lost, stolen or damaged:

17.2.1. you must notify us without unreasonably delay; and

17.2.2. you must pay us the replacement cost of the Loan Equipment calculated as the recommended retail price at the date the Loan Equipment was lost, stolen or damaged minus any amount we recover under an insurance policy.

18. Third party materials

18.1. In providing a service we may supply you with materials (including software) licensed by third parties.

18.2. You must comply with the terms of the third party license and you indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of a third party license.

19. Delay

19.1. We will use our reasonable efforts to meet any deadlines or milestones that we promise to meet but will not be liable for any delay or failure to meet these.

19.2. To the extent that our provision of a service is impaired by:

19.2.1. you;

19.2.2. a third party;

19.2.3. a failure or defect (not caused by us) in hardware or software (not supplied

by us); or

19.2.4. an event beyond our reasonable control – then:

19.2.5. our obligation to provide the service is suspended;

19.2.6. we will not be liable to you in respect of any delay or failure to provide the service.

19.3. Where our personnel are delayed from performing a service due to a delay you cause, we may invoice you those personnel's hourly rate for the duration of the delay subject only to us making reasonable efforts to reallocate our personnel to other chargeable duties.

20. Confidentiality

20.1. A party must not use or disclose the other party's confidential information without prior written approval.

20.2. Each party must take all reasonable steps to ensure that its employees and agents do not use or disclose the other party's confidential information.

20.3. A party may disclose confidential information where required by law or the rules of a stock exchange.

20.4. This clause survives termination of this agreement.

20.5. 'Confidential information' means all information treated by the owning party ('discloser') as confidential and:

20.5.1. provided to the other party ('recipient'); or

20.5.2. of which the recipient becomes aware –

except information that:

20.5.3. the recipient creates or lawfully obtains independently of the discloser; or

20.5.4. is public knowledge (otherwise than as a result of a breach of confidentiality by the recipient).

21. Intellectual property rights

21.1. Unless otherwise specified in writing, we own exclusively all intellectual property rights in material, including software, that we design, create, modify, supply or license, even if it was created or modified for or suggested by you.

21.2. To the extent necessary for you to receive the benefit of a service, we grant you a non-exclusive, non-transferable, license to use our materials.

21.3. If any of your materials become combined with our materials with your knowledge and without your objection, then we have a perpetual, royalty-free, irrevocable, non-exclusive license to copy, use, adapt and distribute and sub-license those materials in the course of our ongoing business.

21.4. 'Intellectual property rights' includes all patents, copyright, rights in circuit layouts, registered designs, trademarks, trade, business or company names and the right to have confidential information kept confidential.

22. Limitation of liability

22.1. Our maximum aggregate liability under a Service Agreement or Claim, whether for breach of these terms or in negligence or in any other tort or for any other common law or statutory cause of action or otherwise is the amount equal to the fees you have paid to us under the Service Agreement.

22.2. We will not be liable to you for data loss under any circumstances.

22.3. No Liability for Security Breaches. We do not warrant that our products or the IT Services are free from defects or resistant to security breaches. To the maximum extent permitted by law, we do not accept any liability whatsoever for any direct, indirect or consequential damages including loss of profits, revenue, data or use arising out of or in relation to the supply of any products, the IT services or any breach of security related to the IT services or products so provided. You agree that we shall not be liable or otherwise responsible for any damage or loss caused by your act, omission or failure in respect of your use of our products or the IT services. By your use of the products or acceptance of the IT Services, you assume the risk of the limitations inherent in the IT services and agree that no warranty or guarantee is given by us concerning any particular result.

22.4. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Where these Terms contain, or the law requires or implies into these Terms, a warranty or guarantee which may not lawfully be excluded, restricted or modified, our liability for failure to comply with such a warranty or guarantee is limited, at our sole discretion, one or more of the following:

22.4.1. With respect to any goods, replacement or repair of the goods or the supply of equivalent goods, payment of the cost of replacing the goods or equivalent goods or payment of the cost of repair of the goods.

22.4.2. With respect to the IT services, resupplying the IT services or payment of the cost of having those IT services resupplied.

23. Warranty and Indemnity

23.1. You must indemnify us, our employees and agents against any loss (including reasonable legal costs and expenses) or liability any of us reasonably incurs or suffers arising from any proceedings where such loss or liability was caused by:

23.1.1. your breach of these General Terms & Conditions or a Service Agreement; or

23.1.2. your willful, unlawful or negligent act or omission.

24. Termination and suspension of Service Agreement

24.1. We may terminate or suspend performance of a Service Agreement immediately if:

24.1.1. you breach the Service Agreement and fail to remedy the breach within 14 days after receiving a notice detailing the breach and requiring that it be cured;

24.1.2. you become insolvent;

24.1.3. you fail to pay money owed to us within 30 days of it being due;

24.1.4. you cease, or threaten to cease, carrying on your business;

24.1.5. you exceed your credit limit or there is an adverse change in our credit assessment of you;

24.1.6. we reasonably believe that you have used a service for un-authorised, criminal or unlawful activity; or

24.1.7. an administrator or controller (as those terms are defined in the *Corporations Act 2001*) is appointed in respect of any of your assets.

24.2. Your breach of a Service Agreement is deemed to be a breach of these General Terms & Conditions and all other Service Agreements.

24.3. Termination of a Service Agreement does not affect our rights of action based on anybreach by you before the termination.

24.4. On termination we may:

24.4.1. repossess any of our property in your possession, custody or control;

24.4.2. retain all moneys paid to us under the Service Agreement;

24.4.3. provide you with an invoice for all unpaid fees and expenses and any costs incurred by us as a result of termination; and

24.4.4. pursue any additional or alternative remedies provided by law.

24.5. If you terminate a Service Agreement prior to its expiry, then you must pay us within 14 days of invoice, the equivalent of the Monthly Service Fee multiplied by the numberof months remaining in the Service Agreement[1].

24.6. The termination fee in clause 26.5:

24.6.1. is a reasonable pre-estimate of our loss and damage arising from an early termination of a Service Agreement; and

24.6.2. is without prejudice to any other rights we may have to recover other sums from you.

24.7. Should the Service Agreement expire and not be expressly terminated by you it will continue indefinitely on a quarter-by-quarter basis and you must provide us with 90 days' notice to cancel the service.

24.8. Upon expiry or termination of a Service Agreement each party must return any property belonging to the other party within 7 days.

24.8.1. Where you have a right to terminate a Service Agreement, or any individual service, under these terms, you may only do so by providing us with written notice.

24.9. Should the Service Agreement expire and not be expressly terminated by you it will continue indefinitely on a quarter-by-quarter basis and you must provide us with 90 days' notice to cancel the service.

24.10. Any discount provided to you in relation to the Service Agreement Fixed Term shall be revoked and your pricing will revert to the Uncontracted Price.

25. Termination for Non-Performance

25.1. You may terminate the Service Agreement immediately if we breach a Service Level Agreement and fail to remedy the breach within 14 days after receiving a notice

detailing the breach and requiring that it be cured.

25.2. Termination of a Service Agreement does not affect our rights of action based on any breach by you before the termination and is without prejudice to any other rights we may have to recover other sums from you.

25.3. On termination we may retain all moneys paid to us under the Service Agreement.

25.4. If you terminate a Service Agreement prior to its expiry as per clause 25.1, then no termination fee will be payable.

26. Notices

26.1. All notices must be:

26.1.1. in writing;

26.1.2. signed by the party giving it (or its authorised representative); and

26.1.3. sent to a party's service address.

26.2. A party's service address is any of:

26.2.1. in the case of a corporation, its current registered office;

26.2.2. the parties' business addresses set out in a Synergy Order Form; or

26.2.3. any other address a party nominates, by written notice to the other party, as a service address.

27. Restraints

27.1. Neither party may approach the Employees, Agents or Contractors of the other party to this Agreement, with an offer of employment during the term of this Agreement or for each of the following periods, 12 months, 6 months, 3 months and 2 months after its expiry or termination.

27.2. For the avoidance of doubt, nothing in clause 27.1 prevents either party from employing an employee of the other party as a result of the employee responding to a public notice, in the absence of any solicitation however if this occurs then the employing party will pay a replacement recruitment fee equivalent to the market rate of that position.

28. General matters

28.1. We are an independent contractor and have no authority to bind you by contract or otherwise.

28.2. We may sub-contract the performance of this agreement if we obtain your prior written consent (which you must not unreasonably withhold).

28.3. We may assign or novate our rights and obligations under this Agreement at any time without your consent.

28.4. You may not assign your rights and obligations under this agreement without our prior written consent (which we will not unreasonably withhold).

28.5. If a party overlooks a breach of a Service Agreement by the other party on one or more occasions, it is not taken to have agreed to any future breach.

28.6. These General Terms & Conditions, the Service Agreement and the Schedule of fees are the entireagreement between the parties with respect to the services specified in the Service of Fees and all prior agreements regarding those services are superseded. No amendment or modification of a Service Agreement is binding unless in writing and

executed by the parties.

28.7. Anything that is unenforceable must be read down, to the point of severance if necessary.

28.8. Anything a party can do, it may do through an appropriately authorised representative.

28.9. Any matter in our discretion is in our absolute and unfettered discretion.

29. Applicable law and disputes

29.1. This agreement is subject to the laws that apply in New South Wales, Australia.

29.2. Any dispute or difference arising in connection with this agreement will be submitted to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia Expedited Commercial Arbitration Rules.

29.3. Otherwise, legal proceedings relating to this agreement or any dispute about it must be brought in the courts of New South Wales, Australia.

30. Interpretation

30.1. Headings are for navigational assistance only and do not affect the meaning of this agreement.

30.2. Where a term is said to 'include' one or more things, the list is not exhaustive and does not limit the natural meaning of the term in any way.

30.3. A schedule or attachment to a document (including a schedule or attachment to this agreement) is part of that document, as is any document incorporated by reference.

30.4. A reference to the singular includes the plural and vice versa.

30.5. There is no significance in the use of gender-specific language.

30.6. A 'person' includes any entity which can sue and be sued and any legal successor to or representative of that person.

30.7. A reference to 'hardware' or 'Loan Equipment' includes all IT and communication products and equipment including hardware, software and related parts, accessories and other goods.

30.8. A reference to a law includes any amendment or replacement of that law.

30.9. A provision must not be construed to the disadvantage of a party because that party prepared or required it.