

Professional Services Terms and Conditions

THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS (“Terms”) shall govern the provision of professional services by Synamedia for Customer on a time and materials basis. The Services may include integration, configuration, project management, advice and recommendations. In connection with the performance of the Services, Synamedia shall be entitled to rely on all decisions and approvals of Customer.

1. Services.

The engagement is based on understandings and expectations that apply at the time the applicable SOW is executed by the parties. Prior to Synamedia performing the Services, Customer must have a fully executed SOW and have issued a valid purchase order to Synamedia for the full value of the Services as set forth in the applicable SOW.

2. Payment of Invoices.

- a) For the Services provided by Synamedia hereunder, Customer shall compensate Synamedia as set forth in the applicable SOW. Customer shall reimburse Synamedia for all reasonable out-of-pocket expenses incurred by Synamedia in performing the Services (including all reasonable travel, meal, lodging and mileage expenses) in accordance with Synamedia's standard policies as they exist from time to time. Customer shall be responsible for any taxes imposed on the Services or the engagement, other than taxes imposed by employment withholding for Synamedia's personnel or on Synamedia's income or property.
- b) Synamedia shall invoice Customer in accordance with the terms of the applicable SOW for fees accrued and expenses incurred by Synamedia in performing the Services hereunder. Synamedia's invoices shall be due thirty (30) days from receipt of an invoice. If payment is not received within thirty (30) days of receipt of an invoice (i) such invoice shall accrue a late charge equal to the lesser of (a) 1½% per month or (b) the highest rate allowable by law, in each case compounded monthly to the extent allowable by law, and (ii) Synamedia may also suspend or terminate the Services.

3. Term.

These Terms shall commence on the date a SOW is executed by the parties and, unless sooner terminated as set forth below, shall terminate upon completion of the Services. Either party may upon thirty (30) days prior written notice, terminate a SOW for cause where such party has breached a material provision of these Terms or the SOW, and failed to cure or take reasonable steps to cure within such thirty (30) day period. Synamedia may terminate a SOW or performance of any part of the Services upon written notice to Customer if Synamedia determines that the performance of any part of the Services would be in conflict with law, or independence or professional rules.

4. Ownership.

Synamedia will own all works of authorship, materials, and other intellectual property produced by Subcontractor or its personnel hereunder, including, without limitation, deliverables, computer programs (source code and object code), programming aids and tools, documentation, reports, data, designs, concepts, and other information, whether copyrightable or patentable or not (collectively, “Work Product”). Upon full and final payment to Synamedia, Synamedia shall grant to Customer an irrevocable, non-exclusive, nontransferable worldwide, royalty-free license to use, execute, reproduce, or display the Work Product solely in furtherance of utilizing the Services provided under an applicable SOW for Customer's internal business purposes.

5. Document Review and Approval Process.

For documents that are subject to review and approval from Customer, the parties will adhere to the following review and approval process:

- a) Synamedia will present the draft documents to Customer when the document is ready for review and approval.
- b) Customer shall review the draft documents with Synamedia, providing written comment or approval of the document within five (5) business days or such other mutually agreed upon period after completion of such review.
- c) If no comment or approval is received by Synamedia within said time period, the documents as provided by Synamedia is deemed to be accepted by Customer.
- d) If Customer provides comments, then Synamedia shall address such comments in a timely manner and this process for review and approval will be repeated.
- e) No further Services as defined in the SOW will be performed until Customer's acceptance of document is received by Synamedia.
- f) If Customer nevertheless insists on Synamedia performing any further Services as defined in the SOW, the relevant document as presented by Synamedia will be deemed accepted.

6. Change Management Procedures.

It may become necessary to amend the SOW for reasons, including but not limited to, the following:

- a) Changes to the scope of Services and/or specifications for the Services,
- b) Changes to the Milestone Invoice Schedule (MIS),
- c) Changes to the project schedule,
- d) Unavailability of resources which are beyond either party's control, and/or,
- e) Environmental or architectural conditions not previously identified.

Either party may initiate a request for a change using the following procedure:

- a) The party requesting the change will deliver a "Change Request" to the other party (an example of which is available from Synamedia). The Change Request will describe the nature of the proposed change, the reason for the change and details of the expected impact, if any, on the project's schedule, scope, pricing and payment.
- b) The Parties will evaluate the Change Request and negotiate in good faith the changes to the Services and additional fees, if any, required to implement the Change Request. If both Parties agree to implement the Change Request, both Parties will sign the Change Request, indicating their acceptance of the changes.
- c) Upon execution of the Change Request, the Change Request will be considered an amendment of this SOW.
- d) Synamedia is under no obligation to proceed with any Change Request until both Parties sign the Change Request.
- e) If there is a conflict between a fully executed Change Request and the original SOW, or a previous fully executed Change Request, the provisions of the most recent fully executed Change Request will prevail.

7. Confidentiality.

To the extent that, in connection with a SOW, either party (each, the "receiving party") comes into possession of any confidential information of the other party or third parties to which it has an obligation of confidentiality (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent, using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The disclosing party hereby consents to the receiving party disclosing such information (i) as expressly set forth in the SOW, (ii) to contractors providing administrative, infrastructure and other support services to the receiving party and to subcontractors providing services in connection with a SOW, in each case, whether located within or outside of the United States, provided that such contractors and subcontractors have agreed to be bound by confidentiality obligations similar to those in this Section 5, (iii) as may be required by law or regulation, or to respond to governmental inquiries, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining to the Services or these Terms, or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the receiving party on a nonconfidential basis from a source which the receiving party believes is not prohibited from disclosing such information, (C) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (D) is developed by the receiving party independent of any disclosures of such information to the receiving party. Synamedia may, however, use and disclose any knowledge and ideas acquired in connection with the Services to the extent they are retained in the unaided memory of its personnel.

8. Limitation on Warranties and Actions.

This is a Services agreement. Synamedia warrants that it will perform the Services in good faith and in a professional manner. *Synamedia disclaims all other warranties, either express, implied or statutory, including warranties of merchantability and fitness for a particular purpose.* No action, regardless of form, arising under or relating to a SOW or the Services may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought not later than one year following the due date of the last payment owing to the entity bringing the action.

9. Limitation on Damages.

Each party, its subsidiaries, subcontractors, and their respective personnel shall not be liable for any claims, liabilities, or expenses relating to a SOW or the Services ("Claims") for an aggregate amount in excess of (i) in the case of Synamedia, the fees paid by Customer to Synamedia pursuant to the applicable SOW, or (ii) in the case of Customer, the

fees paid and payable by Customer to Synamedia pursuant to the applicable SOW, except to the extent resulting from gross negligence or intentional misconduct. *In no event shall either party, its subsidiaries, subcontractors, or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense (including lost profits and opportunity costs), relating to a SOW or the Services.*

10. Cooperation.

In addition to Customer's responsibilities as set forth in the SOW, Customer shall cooperate with Synamedia in the performance by Synamedia of the Services, including, providing Synamedia with adequate working space, equipment and facilities and timely access to data, information and personnel of Customer. With respect to the data and information provided by Customer to Synamedia or its subcontractors for the performance of the Services, Customer shall have the rights required to provide such data and information and shall do so only in accordance with applicable law and with any procedures agreed upon in writing. Customer shall be, responsible for the performance of their respective personnel and agents and for the accuracy and completeness of all data and information provided to Synamedia hereunder.

Synamedia's performance is dependent upon the timely and effective satisfaction of Customer's responsibilities under a SOW and timely decisions and approvals of Customer in connection with the Services.

11. Non-Exclusivity.

Synamedia may (i) provide any services to any person or entity, and (ii) develop for itself, or for others, any materials or processes including those that may be similar to those produced as a result of the Services, provided that, Synamedia complies with its obligations of confidentiality set forth hereunder.

12. Waiver of Jury Trial.

The Parties hereby irrevocably waive, to the fullest extent permitted by law, all rights to trial by jury in any action, proceeding or counterclaim relating to an applicable SOW or the Services.

13. Other Terms.

- a) Force Majeure. Except for the payment of money, neither party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including, fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
- b) Independent Contractor. Both Synamedia and Customer are independent contractors and neither party is, nor shall be considered to be, nor shall purport to act as, the other's agent, partner, fiduciary, joint venturer, or representative.
- c) Survival and Interpretation. All provisions which are intended by their nature to survive the performance of the Services shall survive such performance, or the expiration or termination of an applicable SOW. In the event of any conflict or ambiguity between the Terms and the SOW, the Terms shall govern and control. Each provision of these Terms shall apply to the fullest extent of the law, whether in contract, statute, tort (such as *negligence*) or otherwise, notwithstanding the failure of the essential purpose of any remedy. Any references herein to the term "including" shall be deemed to be followed by "without limitation".
- d) Notices. Whenever under these Terms notice is required or permitted to be given, such notice shall be in writing and effective upon receipt. All notices shall be hand delivered, sent by a reputable commercial overnight courier, or mailed by registered or certified United States mail, return receipt requested, postage prepaid, and addressed to the addressee at its address set forth below.

To Synamedia:

Synamedia Limited
Attn: General Counsel
One London Road,
Staines-upon-Thames, Middlesex, TW18 4EX

To Customer:

The address set forth in the applicable SOW.

A party may change its address for notice by giving prior written notice of the new address in conformity with the foregoing and the date upon which such new address will become effective.

- e) Binding Nature; Assignment and Subcontracting. These Terms, including an applicable SOW shall be binding on the respective parties thereto and their respective permitted successors and assigns; provided, however, that, except as provided below, neither Synamedia nor Customer may assign any of its rights or obligations (including interests or claims) relating to a SOW or the Services without the prior written consent of the other. Customer hereby consents to Synamedia assigning or subcontracting any portion of the Services to any affiliate or related entity, whether located within or outside the United States. Services performed under an applicable SOW by Synamedia's subcontractors shall be invoiced as professional fees on the same basis as Services performed by Synamedia's personnel, unless otherwise agreed.
- f) Waivers and Amendments. No delay or omission by Synamedia or Customer in enforcing its rights or remedies under these Terms or an applicable SOW shall impair such right or remedy or be deemed to be a waiver thereof. No waiver of any right or remedy under these Terms or the applicable SOW with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion. No amendment or waiver of these Terms or the SOW shall be valid unless in writing and signed by the parties thereto.
- g) Entire Agreement. These Terms, together with its attachments and the SOW, constitutes the entire agreement with respect to the subject matter hereof and supersedes all other oral or written representations, understandings or agreements relating to the subject matter hereof. No additional terms on a purchase order shall be binding upon Synamedia and are deemed rejected.
- h) Governing Law; Jurisdiction and Venue. These Terms and all matters relating to these Terms, a SOW or the Services shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the choice of law principles thereof). Any action based on or arising out of these Terms, the SOW or the Services shall be brought and maintained exclusively in any state or federal court, in each case located in New York County, the State of New York. Each of the parties hereby expressly and irrevocably submits to the jurisdiction of such courts for the purposes of any such action and expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action brought in any such court and any claim that any such action has been brought in an inconvenient forum.
- i) Severability. If any provision of these Terms or the SOW is found unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in these Terms.