

SUBSCRIPTION AGREEMENT

Non-Subscriber

It is agreed as follows:

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement, unless the context requires otherwise.

Access means obtaining access to the Service via the internet.

Affiliate means, in relation to a party, any entity that has Control over the party or any entity that is under the Control of the same entity that ultimately has Control over that party.

Agreement means the terms and conditions in this Subscription Agreement (Non-Subscriber).

Approved Card means any Visa, MasterCard, debit card, PayPal or other payment mechanism that is supported by the Service from time to time as an acceptable payment method.

Arrangement means any arrangement, understanding or agreement (whether formal or informal, whether in written, electronic or oral form) between You and any member of the Total Synergy User Community (other than Us) that arises out of or in connection with a Project or the use of the Service, including any agreement to supply or purchase goods or services.

Benchmark Data means any data that is included in the Data Service.

Confidential Information means any non-trivial information however recorded, preserved, disclosed or communicated (whether directly, indirectly, orally or by writing), disclosed by either party or its Representatives (**Discloser**) to the other party or its Representatives (**Recipient**) in connection with this Agreement that, if disclosed in writing is marked as "Confidential" or "Proprietary," or, if disclosed orally is identified as "Confidential" or "Proprietary" at the time of disclosure and is specifically identified as confidential in a written document provided by Discloser to Recipient within thirty (30) days after the oral disclosure, or which is, or ought to have been, understood by the parties, using reasonable business judgment, to be confidential. The Service, the Benchmark Data and any related information (including License Management Features or other security codes provided to You to Access the Service), and this Agreement are agreed to be Our Confidential Information.

Contract Details means the description of the Services that are set out in the Service and the details that are selected or completed by You from within the Service (as applicable) at the time when You complete the sign on process to the Service or at the time that You make a change using the subscription management features of the Service, and include Your legal identity, contact details for notices, the software programs that are included in the Service, the levels of Service, the Project and the customer for the Project, the Term, the Fees including the metric used to calculate the Fees, any charges, including charges for processing payments by Approved Card and related Taxes.

Control means the ability to direct the affairs of another person or entity, whether by virtue of ownership of shares, contract or otherwise.

Data Service means the supply of any Service that provides comparative analysis or benchmarking data, that is identified on the Contract Details as part of Our data services programme.

Effective Date means the date when a user has selected "I Agree" as part of the sign on process in the Service.

Fees means the amount payable for the Service, exclusive of Taxes, which is specified on the Contract Details.

Intellectual Property Rights means copyright, moral rights, trade mark, design rights, service marks, patent, semiconductor or circuit layout right, trade secrets, know-how, database rights or other rights in the nature of intellectual property rights (whether registered or unregistered), or any right to registration of such rights, existing anywhere in the world, or protected by statute from time to time, whether created before, on or after the Effective Date.

License Management Features means any form of lock, password or other mechanism that may be used to control Access to, or manage use of, the Service.

Online Help Documentation means the documentation related to the Service that is available online as part of the Service, which We may change from time to time, in Our discretion.

Personal Information means any information or data that is subject to any Privacy Law.

Privacy Law means any law, regulation or common law which governs the use of information that is about, identifies or can be used to identify, any identifiable individual, or which is generally understood in the relevant jurisdiction to protect an individual's privacy and/or to govern the collection, use, disclosure or transmission of personal information or data.

Project means a commercial project (as defined in the Service) where a Project Leader invites one or more Total Synergy Users to collaborate together using the Service to create, share and manage documents, plans and other data for single project of a single customer of the Project Leader.

Project Leader means a Total Synergy User who has the role of Project Leader in the Service and as a result is permitted to invite other Total Synergy Users (including You) to use the Service to collaborate in the Project Leader's Projects from time to time.

Representatives means the employees, agents, contractors of a party, or those of any Affiliate, and the professional representatives of a party providing advice in relation to this Agreement, including the lawyers, bankers, auditors, accountants and insurers of a party.

Service means being granted Access to the software programs specified on the Contract Details, and any new version of the software program that may be implemented into the Service by Us, in Our discretion and related Online Help Documentation. The term Service includes the provision of the website through which You Access the software programs and Online Help Documentation. There may be different levels of Service, with different features, benefits and fees, all of which will be described in the web pages in the Service.

Taxes includes goods and services tax, sales taxes, duties, withholding taxes, levies, imposts or other charges or duties levied by any government which arise out of or in connection with the Service or this Agreement, and any interest, penalties or liabilities incurred on such amounts, but excludes taxes based on Our net income.

Term means the period for which You have acquired the right to Access the Service, which shall be a month unless specified otherwise in the Contract Details. The Term may be renewed in accordance with clause 3.8.

Total Synergy User means an entity that enters into a separate agreement with Us that allows that entity to become a member of the Total Synergy User Community in any capacity, including in connection with a particular Project in any role defined within the Service e.g. Contractor, Authorities, Sub-Consultant etc.

Total Synergy Marks means all trademarks, service marks, logos or other words or symbols identifying the Service, Us or Our business.

Total Synergy User Community means all the different types of user of the Service as may be defined from time to time as the Service is updated.

Transactional Data means any data that is entered into the Service by any person other than Us, Our Affiliates or their respective contractors, any includes any data that is initially entered in any third party application that is connected to the Service via an API, other interface or Synergy Connect Service but which is subsequently available for processing by the Service.

You, Your, Yourself means the entity that has been entered into the sign on screen on the Service as the party that is entering into this Agreement with Us.

We, Us, Our means:

- (a) Total Synergy USA Inc. entity of Level 35, Speer Tower, One Market Street, San Francisco CA 94015 if You are located in the United States;
- (b) Total Synergy UK Limited entity of Herschel House, 58 Herschel, Slough, Berkshire SL1 1PG, if You are located in the United Kingdom;
- (c) Total Synergy (A/E/C) Pty Ltd entity of Level 15, 99 Mount Street, North Sydney, NSW, 2060, Australia, if You are located in any country other than United Kingdom or the United States.

1.2. The headings in this Agreement do not affect its interpretation. Except where the context otherwise

requires, references to clauses are to clauses of this Agreement.

- 1.3. Words in the singular include the plural and those in the plural include the singular.
- 1.4. **includes** and **including** are not words of limitation.
- 1.5. A person or entity includes a natural person, partnership, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2. Authority

- 2.1. The person that clicked "I Agree" during the sign on process warrants to Us that he/she had authority to enter into this Agreement on behalf the entity that was entered into the sign on screen on the Service as the party entering into this Agreement.
- 2.2. By using the Service the entity that uses the Service adopts this Agreement as from the Effective Date, and that entity acknowledges that it is bound by the terms and conditions of this Agreement as from the Effective Date, even if the person that clicked "I Agree" during the sign on process did not have authority to enter into this Agreement on behalf the entity that uses the Service.
- 2.3. If there is any difference between the entity that was entered into the Service during the sign on process and the entity that uses the Service, the latter shall prevail. This latter entity is bound by the terms and conditions of this Agreement and is referred to as You (Your, Yourself) in this Agreement.

3. Access rights and the Term

- 3.1. We grant to You a non-exclusive, non-transferable, limited right for up to the number of Named Users to Access the relevant parts of the Service for the Term, to receive the features and benefits of the relevant level of Service, for the purpose of:
 - (a) processing the internal data of You and any of Your Affiliates for Your business purposes;
 - (b) processing data of You, Your Affiliates and any Total Synergy Users who are accessing and using the Service as part of a Project to which You have been invited to collaborate by the Project Leader, solely for the benefit of the Project,subject to any other limitations of use, all as specified on the Contact Details.
- 3.2. If You wish to vary the Service, the level of Service, the number of Named Users, add any features or benefits that are offered as part of the Services that are available from Us or end the Service or terminate the Service, You may make the change using the subscription management features within the Service. These changes will become effective at the end of the calendar month in which you make the change unless stated otherwise in the subscription management features within the Service. No refunds will be made for any Services paid for in advance when you end the Service in this way.
- 3.3. If You use a single log in to access different accounts, then each account may be subject to different terms and conditions depending on the role that You are performing in each account.
- 3.4. We have appointed a third party who We believe to be a professional and capable provider to provide us with hosting and back up services for the Services and the data held in it. However owing to the nature of hosting and back ups We do not warrant or guarantee that:
 - (a) the Service will be uninterrupted or error free;
 - (b) all data will be backed up and/or recoverable by Us. The features of the Service enables You to easily download and save Your data to another location at any time You want, and it is Your responsibility to download and back up Your data at regular intervals (and to verify the completeness of the back up) to ensure that You do not lose any data. You must not rely on Our back ups of Your data.
- 3.5. We are not responsible for any delays, delivery failures or any other loss of damage resulting from the transfer of data over communications networks or facilities, including the internet, and You acknowledge and agree that the Service may be subject to limitations, delays or other problems

inherent in the use of such communications.

3.6. During the Term:

- (a) You may notify Us of any defect that You believe is in the Service using the process set out in the Service and We will use reasonable efforts to remedy and any material defects in the Service in a timely manner;
- (b) We may implement any new version of the software programs (including adding new features or removing existing features) as part of Our product roadmap, correct defects in the software program of the Service, perform maintenance on or vary the hosting facilities, infrastructure, networking, hardware, software or other material that supports the Service in Our absolute discretion, and without liability or prior notice to You. We do not guarantee that any change, addition, deletion, error correction, patch or new version of the Service (or any part of it) will be compatible with any of Your data, application, other software or interface that connects to or interfaces with the Service that has been made by You or on Your behalf.

3.7. If You require Access and use of the Service for the duration of a Project You must ensure that the Term continues (and/or You renew the Term) until the end of the Project.

3.8. The Term will be renewed automatically at the end of the current Term unless You terminate the Service in accordance with clause 3.2 or We give You notice at least fifteen (15) days' notice prior to the end of the current Term that We do not wish for the Service to continue.

3.9. We will give You at least thirty (30) days' notice for any increase in the Fees that will be payable in respect of any new Term.

3.10. The Service for any period of new Term will be provided at the Fees and on the terms and conditions, that in force at the time that the new Term starts, such terms and conditions will be posted on Our website and You will be required to agree to them at the time You renew the Term.

3.11. Nothing in this Agreement permits You to, nor permits You to permit any other person to:

- (a) copy, adapt, translate, publish, communicate to the public, disassemble, decompile, reverse engineer or create any derivative work or translation of any part of the Service, unless expressly permitted by law;
- (b) sub-license, lease, rent, loan, assign, novate or otherwise transfer any part of the Service or the benefit or burden of this Agreement in whole or in part to any third party;
- (c) disclose any part of the Service to any third party other than:
 - (i) to any of Your Affiliates;
 - (ii) to any of Your subcontractors who are bound by obligations of confidentiality which are no less restrictive than those specified in clause 9 and who are using the Service, solely for Your (or Your Affiliates') authorised use of the Service; or
 - (iii) other members of the Total Synergy User Community who have entered into an agreement with Us;
- (d) use the Service for the purpose of building a competitive product or service or copying its features or user interface;
- (e) attempt to download or Access the object code or source code of the software programs that are included in the Service;
- (f) use the Service to display, store, process or otherwise use any information (in any format, and whether readable by humans or by machines) that:
 - (i) infringes any person's Intellectual Property Rights, right to privacy, right to keep confidential information confidential, right to publicity or induces any person to breach a contract;
 - (ii) is unlawful (including breaching laws relating to the wrongful distribution of email or other electronic messages "spam"), discriminatory, derogatory, defamatory, slanderous, malicious, obscene, contains child pornography or is immoral;

- (iii) contains any virus, Trojan horse or other malicious code, or is used to gain unauthorised access to, does harm to, wrongfully intercepts, expropriates, accesses or uses for any wrongful purpose, any person's hardware, software, network or data;
 - (iv) wrongly identifies, or disguises, the sender or place of origin of any communication;
 - (v) contains links to any other website that contains information that is of a type described in this clause (e);
 - (vi) in Our opinion, exceeds "fair use" by using a disproportionate or in appropriate amount of the infrastructure or resources that are used to operate the Service;
 - (g) access, monitor or copy any content of the Service using any robot, spider, scraper or automated process or manual process, or deep link or any part of our Service;
 - (h) bypass or circumvent, or attempt to bypass or circumvent any measure that is designed to limit access to any part of the Service, including any License Management Features;
 - (i) frame, mirror or otherwise include any part of the Service in any other website or application;
 - (j) remove, alter or obscure any Total Synergy Marks, or any proprietary or restricted use notice on any part of the Service;
 - (k) use the Service in any way that could endanger, disable, overburden, impair or compromise Our systems or security, or interfere without other users;
 - (l) allow any part of the Service to become the subject of any charge, lien, encumbrance or security interest; or
 - (m) deal in any other manner with any or all of its rights and obligations under this Agreement.
- 3.12. You acknowledge and agree that:
- (a) We may communicate information relating to the Service (and other products and services) with individual users who are in the Service using the features in the Service (including the My Account and Notifications features);
 - (b) We may automatically update information (including Personal Information) held in your Service relating to users of the Service to and from our master database;
 - (c) the Service includes comprehensive audit and verification features, which track and record individual's use of the Service in detail;
 - (d) We may inspect the usage logs in the Service for the purposes of ensuring that You are complying with the terms of this Agreement.
- 3.13. In order to Access and use the Service, each user must have its own hardware with a web browser, relevant application software on its computer and a connection to the internet which have the characteristics that are specified in the Online Help Documentation. You acknowledge and agree that all capital and on-going costs for such items are the responsibility of You or the end user.
- 3.14. You grant Us, Our Affiliates and all of those entities' contractors a limited right to:
- (a) copy, adapt, translate, create derivative works from and otherwise use (including to transfer to anywhere in the world) any Transactional Data, personal information (as defined anywhere in the world) and/or any data relating to the technical environment in which the Service is being used, PROVIDED ALWAYS that We, Our Affiliates and all those entities' contractors use such data solely in connection with performing Our obligations or exercising Our rights under this Agreement; and
 - (b) delete or modify such data in the Service, or suspend Access to the Service by You or any other Total Synergy User, if We believe that any such data or use breaches this Agreement. We do not, and We are under no obligation to, monitor the data for any reason whatsoever. We may exercise this right without any liability to You, and without any prior consultation or explanation.

4. Total Synergy Community Use

- 4.1. You acknowledge and agree that one of the primary functions of the Service is to allow You to connect with other members of the Total Synergy User Community, to collaborate with them and Your customers and to share, manage and disclosure documents, plans and other information relating to Projects and the Service. Our role is to provide You with a Service that enables this to occur, but we are

not responsible for how You or others use the Service, the content of the information that You or others post into the Service, for monitoring any content that is posted into the Service (although we reserve the right to review and remove the content or suspend Access if We believe that it breaches this Agreement) or any Arrangements that You may make with other members of the Total Synergy User Community or others.

4.2. Accordingly:

- (a) You grant each member in the Total Synergy User Community to whom You provide any material in which any Intellectual Property Rights subsist, a non-exclusive license to use, copy, and sub-license to others that material solely: (i) in connection with the use of the Service; and (ii) for the purpose for which the information was given, including for the Project where the material was to be used in connection with a Project. This license includes the right to modify or adapt the material, unless You specifically exclude such right by placing a prominent notice on the material expressly excluding the right to modify or adapt the material;
- (b) As between You and Us, You are solely responsible for any Arrangement that You enter into, including verifying the identity of the person with whom You enter the Arrangement, their financial standing, the terms of the Arrangement, their suitability, skills, experience and ability to perform their obligations under that Arrangement, including making payment or delivering the goods or services, and You are responsible for enforcing the Arrangement;
- (c) You must use a high level of professional judgment when assessing the suitability of any member of the Total Synergy User Community, their goods and services and the accuracy of any information that they have provided. You acknowledge and agree that We have not, and have no obligation to, assess, review, monitor, control, verify or approve the identity, suitability, quality, standing or authenticity of any member of the Total Synergy User Community, their goods and services or the accuracy of any information that they provide;
- (d) You warrant to Us, and You must warrant to each member of the Total Synergy User Community to whom You provide any information, that all information that You provide is true, accurate, up to date and is not deceptive or misleading nor is likely to deceive or mislead;
- (e) You warrant to Us that:
 - (i) You will not enter into any Arrangement with any other member of the Total Synergy User Community that is inconsistent with this Agreement;
 - (ii) You will meet Your obligations under any Arrangement that You enter into with any member of the Total Synergy User Community.

4.3. You may disclose any Confidential Information provided to You by any Total Synergy User to any other person in the Total Synergy User Community solely for use in connection with (i) the use of the Service; and (ii) the purpose for which the information was given, including for the Project where the material was given to be used in connection with the Project, provided that if the Discloser specifically identifies certain information as being confidential to You or any other class of Total Synergy User, You must not disclose that Confidential Information further or beyond that class of person, except to the extent required by law.

4.4. You must follow any guidelines that We publish from time to time relating to the posting of information to the Service.

4.5. When You terminate an account of a member of the Total Synergy User Community in connection with a Project, You agree that the Service may (or We may) contact the member of the Total Synergy User Community using the contact details in the Service and offer that person Our Services or other goods and services independently of You. You agree that We may contact any member of the Total Synergy User Community that You have invited into a Project to offer that person Our Services or other goods and services independently of You.

5. Data Services

5.1. Unless You specified on the Contract Details that You did not want to become part of Our Data Services programme, then:

- (a) You grant Us, Our Affiliates and their contractors, a non-exclusive, irrevocable, royalty free license to any Transactional Data to:
 - (i) copy, adapt, translate, create derivative works from, publish, commercially exploit or otherwise use the Transactional Data in any way; and
 - (ii) sub-license any third party to do any of the same,
 PROVIDED ALWAYS that Your name, company contact details and any Personal Information are removed prior to Us disclosing any of such data to any sub-licensee or the public. You warrant to Us that You have all the necessary rights, consents and approvals to grant the licenses stated in this clause. You may extract such data from the Service at any time during the period of the license. You retain any rights of ownership that exist in such data. Once Your name, company contact details and any Personal Information have been removed from such data, the remaining data is deemed not to include any data that is Your Confidential Information;
- (b) where We provide You with Data Services You acknowledge and agree that:
 - (i) our role is limited to providing the technology that facilitates the presentation of data that is sourced from third parties, and does not extend to the supply of the data itself;
 - (ii) the Benchmark Data is sourced from third parties over which We have no control;
 - (iii) to the maximum extent permitted by law, We:
 - (1) make no warranty, express or implied, in respect of the Benchmark Data, including its long term availability, format or structure;
 - (2) exclude all liability as to the accuracy, authenticity or completeness of the Benchmark Data;
 - (3) exclude any liability for any decisions made by You based on the Benchmark Data;
 - (iv) We do not provide any error correction service in respect of the Benchmark Data, but We may, in Our discretion, provide updates of the Benchmark Data from time to time;
 - (v) the Benchmark Data that is stored in, and used by, the Service that provides the Data Service is included within the definition of Service, subject to the restrictions set out in this clause 5.1(b).

6. Warranty

- 6.1. We warrant to You that Our Service will operate in accordance with the then current Online Help Documentation in all material respects during the Term.
- 6.2. IF THE SERVICES ARE NOT PERFORMED IN ACCORDANCE WITH THIS AGREEMENT YOU MUST NOTIFY US IN WRITING WITHIN SEVEN (7) DAYS OF THE PERFORMANCE OF THE RELEVANT SERVICE AND WE WILL, AT OUR OPTION AND COST, RECTIFY THE DEFICIENCY, RE-PERFORM THE SERVICE, OR REFUND THE AMOUNT PAID FOR THE DEFICIENT SERVICE.
- 6.3. TO THE EXTENT PERMITTED BY LAW, THE REMEDIES SPECIFIED IN CLAUSE 6.2 ARE THE ENTIRE LIABILITY AND SOLE REMEDY FOR BREACH THE WARRANTY IN CLAUSE 6.1 OR ANY WARRANTY REQUIRED BY LAW. OUR OBLIGATION UNDER CLAUSE 6.2 ONLY EXTENDS TO ERRORS THAT YOU CAN DEMONSTRATE TO EXIST IN AN UNMODIFIED VERSION OF THE SERVICE.
- 6.4. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE:
 - (a) ANY WARRANTY ABOUT ANY CONTENT THAT IS INCLUDED INTO THE SERVICE BY ANY PERSON OTHER THAN US, OUR AFFILIATES OR CONTRACTORS INCLUDING ITS ACCURACY, QUALITY OR LEGALITY;
 - (b) ANY WARRANTY ABOUT THE IDENTITY, SUITABILITY, CAPABILITY OR EXPERIENCE OF ANY MEMBER OF THE TOTAL SYNERGY USER COMMUNITY OR THEIR GOODS OR SERVICES;
 - (c) ANY WARRANTY THAT THE SERVICE OR ANY TRANSACTIONAL DATA WILL BE COMPATIBLE WITH SOFTWARE, INCLUDING SOFTWARE, HARDWARE, NETWORKS OR DATA NOT SUPPLIED BY US;
 - (d) ANY WARRANTY THAT THE SERVICE OR ANY TRANSACTIONAL DATA IS SECURE OR FREE FROM VIRUSES OR OTHER HARMFUL CODE.
- 6.5. THIS AGREEMENT SETS OUT THE FULL EXTENT OF OUR OBLIGATIONS AND LIABILITIES IN RESPECT OF

THE SUPPLY OF THE SERVICE. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR AS IS REQUIRED BY LAW, THERE ARE NO CLAUSES, CONDITIONS, WARRANTIES, REPRESENTATIONS OR OTHER TERMS, EXPRESS OR IMPLIED, THAT ARE BINDING ON US. ANY CLAUSE, CONDITION, WARRANTY, REPRESENTATION OR OTHER TERM CONCERNING THE SUPPLY OF THE SERVICES WHICH MIGHT OTHERWISE BE IMPLIED OR INCORPORATED INTO THIS AGREEMENT, INCLUDING SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR PURPOSE, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, IS EXCLUDED TO THE FULLEST EXTENT POSSIBLE BY LAW.

7. Fees, Payment and Taxes

- 7.1. The Fees, expenses and related Taxes for the Service must be paid by You by Approved Card or other form of payment supported by the Service in accordance with the payment process in the Service. We will issue You with an invoice/receipt at the time of payment/receipt.
- 7.2. Where the Fees, expenses and Taxes are denominated in a currency other than the currency that is used as the default currency of Your Approved Card (i.e. Your Approved Card is not issued in the country which uses the currency of payment), You agree:
- (a) to pay any charge from the provider of the Approved Card for an international transaction;
 - (b) to use the exchange rate used by the provider of the Approved Card for the conversion of the Fees, expenses, Taxes or other amounts payable under this Agreement into the currency We use; and
 - (c) that the net amount that is received by Us is always the Fees, expenses and Taxes and other amounts that are dominated in the local currency specified in this Agreement.
- 7.3. To the extent permitted by law, You irrevocably authorise Us to deduct from any Approved Card that You have used to pay any amount under this Agreement or for which You have provided the details to Us, any:
- (a) Fees, expenses and Taxes invoiced under this Agreement;
 - (b) charge backs or fees, including any related taxes, incurred by Us for any failed transaction from the Approved Card, as well as Our then current administration fee for dealing with any failure to receive payment; and
 - (c) amount payable as damages, losses or expenses, or any amount payable under an indemnity, arising out of or in connection with this Agreement.
- 7.4. If there is any failure to make payment by the Approved Card by the due date for any reason, including that the Approved Card ceases to be valid, ceases to be authorised for debiting any amount stated in this Agreement or there is insufficient funds in the relevant account, then You must within seven (7) days:
- (a) provide an alternative Approved Card and authorise all amounts due to be deducted from that Approved Card; and/or
 - (b) make payment of all amounts due by another payment method agreed with Us.

8. Termination

- 8.1. We may immediately terminate this Agreement in whole or part, or suspend Access to the Service, by giving You notice if:
- (a) You attempt to assign, novate or transfer this Agreement or any right or obligation under this Agreement without Our prior written consent;
 - (b) You commit a breach of any of Your obligations in clauses 3, 4.2, 9, ~~1010~~ or ~~1111~~;
 - (c) You commit a breach of any other provision of this Agreement in, and You have not remedied that breach within fourteen (14) days' of notice from Us specifying the breach;
 - (d) You cease to carry on business, are unable to pay Your debts as they fall due, You make an assignment for the benefit of your creditors, You enter into liquidation/petition for bankruptcy or have a controller or managing controller or liquidator, administrator or receiver appointed;
 - (e) You (being a partnership) have the partnership dissolve or wound up (or a similar event occurs to You in Your jurisdiction);

- (f) You (being an individual) are the subject of a bankruptcy petition or order, make an arrangement or offer of compromise with your creditors (or a similar event occurs to You in Your jurisdiction);
 - (g) You (being a partnership) have the partnership dissolved; or
 - (h) there is a merger, sale of substantially all of the assets, or change of control, of You. A "change of control" shall be deemed to occur when an entity acquires fifty percent (50%) or more of the voting shares or equity interest in You or fifty percent (50%) or more of the assets of You, in the event of a change of a majority of the Board of Directors (or majority of the partners if a partnership) of You or if there is a change of effective control of You.
- 8.2. We may terminate or suspend the right of any Total Synergy User to Access and use the Service in accordance with any agreement We have with another Total Synergy User. We have no liability to You if we exercise this right.
- 8.3. You may immediately terminate this Agreement:
- (a) at the end of any calendar month by using the subscription management features in the Service;
 - (b) by giving Us written notice if We commit a material breach of any provision of this Agreement and We have not remedied that breach within fourteen (14) days of written notice from You specifying the breach;
 - (c) by giving Us written notice if We cease to carry on business, are unable to pay Our debts as they fall due, enter into liquidation or have a controller or managing controller or liquidator or administrator appointed.
- 8.4. A Project Leader may terminate or suspend Your Access to any Project for which he/she is the Project Leader immediately, for any reason and without liability to You.
- 8.5. Termination (for any reason) or expiration of this Agreement shall not:
- (a) release You from the obligation to pay any monies to Us whether due before or after termination or expiration of this Agreement; or
 - (b) affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 8.6. You are solely responsible for ensuring that You have extracted any information that You have entered into the Service prior to the end of the Term. We may be able to provide You with a copy of any back up that We have taken of the data that is stored in your instance of the Service as at the time when the Service is terminated for a period of three (3) months. This Service is offered as a courtesy and is offered without any obligation or liability as to the availability, content or completeness of back up of the data. We may, but are under no obligation to, delete all data in the Service at any time after three (3) months after the end of the Term.

9. Confidential Information

- 9.1. The Recipient must not use any of the Discloser's Confidential Information except in connection with the performance of the obligations specified in this Agreement.
- 9.2. The Recipient must not disclose the Discloser's Confidential Information to any third party without obtaining the Discloser's prior written consent, provided that the Recipient may disclose the Discloser's Confidential Information to:
- (a) its employees, agents and contractors, and those of any of its Affiliates, who have entered into a written agreement with the Recipient that is no less protective of the Discloser's Confidential Information than as provided under this Agreement provided those persons have a need to know such information for the purposes of this Agreement; and/or
 - (b) its lawyers, bankers, auditors, accountants and insurers, who have a need to know the information in order to provide professional advice to the Recipient relating to this Agreement.
- 9.3. You must ensure that each person who is issued with a password to the Service (or any part of it) does not disclose their password to any other person.
- 9.4. The Recipient must use, and must ensure that any person to whom it is permitted by this Agreement to disclose the Discloser's Confidential Information to uses, at least the same measures to protect the Discloser's Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable measures.

- 9.5. The restrictions of this clause 9 shall not apply to information that:
- (a) is independently developed by the Recipient without any access to the Confidential Information of the Discloser;
 - (b) becomes known to the Recipient without restriction, from a third party who, to the Recipient's knowledge, was not bound by a confidentiality agreement with the Disclosing Party, or otherwise prohibited from disclosing the information to the Recipient, or had the right to disclose it;
 - (c) was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
 - (d) was lawfully in the possession of the Recipient before the information was disclosed to it by the Discloser;
 - (e) is or becomes in the public domain through no act or omission of the Recipient;
 - (f) the parties agree in writing is not confidential or may be disclosed; or
 - (g) is required to be disclosed under an order or requirement of a court, administrative agency, or other governmental body (but only to the minimum extent required to comply), provided however, that Recipient must provide prompt notice to Discloser of any potential disclosure and must use its reasonable efforts to prevent disclosure of such information.

10. Trademarks and Copyrights

- 10.1. You acknowledge and agree that We are the owner and/or licensee of the Total Synergy Marks and that all goodwill arising out of Your use of the Total Synergy Marks under this Agreement shall inure to Us. You do not acquire any right to, or interest in, any of the Total Synergy Marks. You must not at any time or in any way indicate Your ownership of, or any right in, the Total Synergy Marks and must not contest the right of Us or any of Our Affiliates to the use of any of the Total Synergy Marks.
- 10.2. You must not remove or disfigure any Total Synergy Marks on the Service (or any part thereof), and must not attach any additional marks to the Service (or any part thereof), except as agreed in writing by Us.
- 10.3. Each party agrees to allow positive/non-negative reference to the other and the relationship under this Agreement in its marketing presentations, marketing materials, lists of customers or suppliers (as applicable), and websites as well as in discussion with prospective resellers and customers, and industry/financial analysts. You agree that We may use Your company name, web address, trademarks, description of Your services, information that is available on Your website and any information that You post on any part of the Service that is available to the Total Synergy User Community in Our marketing material, including on Our website royalty-free and in perpetuity. You consent to Us sending You marketing information, offers and information relating to other products and services from Us and our suppliers.

11. Proprietary Rights

- 11.1. All Intellectual Property Rights in any part of the Service, including adaptations, translations and derivative works of it, whether created by Us, You or any other person, are and shall remain the exclusive property of Us (and Our suppliers, if any), or shall vest in or be transferred or assigned to Us immediately upon creation, as the case may be.
- 11.2. Except for the rights expressly granted by Us to You under this Agreement:
- (a) We and Our suppliers, if any, reserve all right, title and interest in and to the Service and all Intellectual Property Rights in it;
 - (b) no right, title, ownership interest or license in or to the Service whether by implication, estoppel or otherwise, is granted, assigned or transferred to You under or in connection with this Agreement.
- 11.3. You acknowledge and agree that the unauthorised disclosure, use or copying of any part of the Service may cause Us serious financial loss. Accordingly, in the event of any unauthorised disclosure, use or copying of any part of the Service, You agree that We shall have the right to obtain injunctive or other equitable relief.
- 11.4. At Our request, You must assign or transfer the Intellectual Property Rights to any adaptations, translations, customisations, enhancements, improvements, derivative works or other modifications

made to any part of the Service by You, Your contractors or agents to Us or Our designee and to sign any document reasonably required to assign or transfer any such Intellectual Property Rights to Us or Our designee (at Our expense).

- 11.5. The Service and all other proprietary information provided by Us to You under this Agreement contain and constitute trade secrets, information and data proprietary to and copyrighted by Us.
- 11.6. If You provide Us with any feedback, comments or suggestions relating to the Our products or Services (**Feedback**), You grant Us an irrevocable, non-cancellable, worldwide, royalty-free, license to use, copy, adapt, translate, create derivative works from, sub-license or otherwise exploit in any way (including without hindrance, restriction or subject to any exercise of any person's moral rights) that Feedback for any purpose, including to assist Us to develop or improve current products or Services or to assist Us develop or improve future products and services.

12. Privacy

12.1. Each party agrees:

- (a) that it must comply with the requirements of any Privacy Law that binds You or Us (as applicable) or that governs the Personal Information that is in the Service or which You or Us becomes aware of in the course of Our relationship;
- (b) only to use, collect, disclose, store, process and transfer Personal Information for the purposes of meeting its obligations, or exercising its rights, under this Agreement; and
- (c) that it shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Information or its accidental loss, destruction or damage.

12.2. You warrant that:

- (a) You are entitled to transfer the relevant Personal Information to Us so that We, Our Representatives (and their permitted successors, assignees and sub-licensees) and other Total Synergy Users may lawfully use, collect, disclose, store, process and transfer the Personal Information as contemplated by this Agreement (including transfers to any country overseas that We consider necessary for Us to provide the Services or that Total Synergy Users consider necessary for them to provide their goods or services), and that the Total Synergy Users and all relevant third parties have been informed of, and have given their informed consent to, such use, collection, storage, processing and transfer, including as required by any applicable Privacy Law;
- (b) any Total Synergy User about whom You provide others with their Personal Information in connection with a Project, the Service or this Agreement has given his/her informed consent for the recipient's use, collection, storage, processing and transfer of the Total Synergy User's Personal Information in connection with the Project, Service, their participation in the Total Synergy User Community or this Agreement, including disclosure to any Project's customer.

12.3. You consent to:

- (a) Us obtaining from a credit reporting agency, or any person You authorise Us to contact, any of Your personal or corporate information, including information relating to creditworthiness, credit standing, credit history or credit capacity (**Credit Information**), for the purposes of assessing Your creditworthiness and/or deciding whether to grant or continue to provide credit approval to You; and
- (b) the provision by Us of any of Your personal or corporate information, including Credit Information and any information concerning the status of your account or any default, to a credit reporting agency, credit provider or person you authorise Us to contact, in connection with Our use of the credit reporting agency's services, on the understanding that such information may be held by the credit reporting agency to provide its/their credit reporting services (including the provision of such services to other customers of the credit reporting agency). You consent to Us being given a consumer credit report to collect overdue payment on commercial credit.

13. Limitation of Liability

- 13.1. TO THE EXTENT PERMITTED BY LAW, OUR LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE SERVICE, THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, BREACH OF

CONTRACT, UNDER THE COMMON LAW, EQUITY OR BREACH OF STATUTORY DUTY), IS LIMITED TO DIRECT LOSSES OF UP TO ONE THOUSAND AUSTRALIAN DOLLARS (AUD \$1,000), AND EXCLUDES ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, LOST PROFITS, LOST REVENUE OR INCOME, FAILURE TO REALISE SAVINGS, LOSS OF DATA OR BUSINESS INTERRUPTION WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 13.2. WE EXCLUDE ALL LIABILITY FOR ANY ACT OR OMISSION (INCLUDING NEGLIGENCE) OF ANY MEMBER OF THE TOTAL SYNERGY USER COMMUNITY IN CONNECTION WITH ANY ARRANGEMENT, PROJECT, GOOD OR SERVICE, EVEN IF THEY HAVE BEEN INVITED BY YOU TO USE THE SERVICE ON ONE OF YOUR PROJECTS. WE DO NOT ENDORSE, RECOMMEND OR SPONSOR ANY MEMBER OF THE TOTAL SYNERGY USER COMMUNITY.

14. **Indemnification**

- 14.1. YOU MUST INDEMNIFY US AND OUR AGENTS AND PAY ANY LOSS, DAMAGE OR EXPENSE (INCLUDING REASONABLE LAWYERS'/ATTORNEY'S FEES) SUFFERED OR INCURRED BY US AND OUR AGENTS ARISING OUT OF OR IN CONNECTION WITH:

- (a) ANY ARRANGEMENT;
 - (b) ANY INFORMATION PROVIDED BY YOU TO ANY MEMBER OF THE TOTAL SYNERGY USER COMMUNITY;
 - (c) ANY INFORMATION POSTED TO THE SERVICE BY ANY PERSON OTHER THAN US, OUR AFFILIATES OR CONTRACTORS;
 - (d) ANY ACT OR OMISSION BY YOU OR YOUR AGENTS OR CONTRACTORS, IN CONNECTION WITH ANY PROJECT OR THE SERVICE;
 - (e) THE CONTENT, USE OR PUBLICATION OF THE TRANSACTIONAL DATA; OR
 - (f) ANY ACTION TAKEN BY US IN CONNECTION WITH CLAUSE 3.14(b),
- EXCEPT TO THE EXTENT THAT THE LOSS, DAMAGE OR EXPENSE WAS DIRECTLY CAUSED BY OUR BREACH OF CONTRACT OR NEGLIGENCE.

15. **General Notices**

- 15.1. All notices under this Agreement must be delivered in writing by email, in person, by courier or by registered post (postage prepaid and return receipt requested) to the other party at the address specified in this Agreement and will be effective upon receipt (in the case of notices being delivered personally) or five (5) business days after being posted as required above, whichever occurs sooner. In the case of e-mail the notice shall be deemed to have been received at the time the e-mail enters the Designated Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender. For the purposes of this clause "Designated Information System" means the information system designated by a party under this Agreement to receive electronic notices pursuant to this Agreement as identified by the email address specified in this clause 15.1. Either party may change its address for receiving notices by giving notice of its new address to the other party. The address for receiving notices for Us is:

Email: accounts@totalsynergy.com

Or Physical address: Total Synergy, Level 15, 99 Mount Street, North Sydney, NSW 2060, Australia.

FAO The Chief Executive Officer, with a copy to the General Counsel

and We may send You an notice by email to any email address that You have provided Us with that We believe is current, and the physical address for You is that specified during the sign up process, or as You have subsequently advised Us.

Relationship of Parties

- 15.2. The parties to this Agreement are independent contractors. Nothing in this Agreement shall be deemed to create an agency, employment, partnership, fiduciary or joint venture relationship between the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. Any agreement that We have with any other

Total Synergy User is solely between Us and that Total Synergy User.

Compliance with Laws

- 15.3. You agree to comply with all laws which are relevant to You performing Your obligations under this Agreement.

Assignment

- 15.4. You must not assign or transfer this Agreement or any rights or obligations under this Agreement, in whole or part, without Our prior written consent.
- 15.5. We may assign or transfer this Agreement, in whole or part, without Your consent to any of Our Affiliates or in connection with a merger, acquisition, or purchase of fifty percent (50%) or more of Our assets. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
- 15.6. If Our distribution agreement for any third party supplied component of the Service terminates for any reason then this Agreement (or the relevant part) may be assigned, novated or transferred to third party. We will use reasonable efforts to procure that the assignee, novatee or transferee will continue to meet Our obligations under this Agreement (as applicable) if such an assignment, novation or transfer occurs. You must sign any document reasonably required by Us to effect such assignment, novation or transfer.

Waiver

- 15.7. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, 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.

Remedies

- 15.8. Except as specifically provided otherwise in this Agreement, the rights and remedies provided under this Agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law.

Severability

- 15.9. If any part of this Agreement is determined to be invalid, illegal or unenforceable by any court or competent authority, such part will be severed from the remainder of this Agreement and the remaining provisions will continue in force.
- 15.10. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

Variation

- 15.11. This Agreement may only be varied by agreement in writing, signed by the parties or where You amend this Agreement by using the functionality within the Service.

Force Majeure

- 15.12. Except for Your obligation to pay Us under this Agreement, neither party shall be in breach of this Agreement nor liable to the other party for any failure or delay in performance caused by events beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six (6) months, the party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other party.

Agreement

- 15.13. The parties are entitled to rely on any notice or communication in electronic format, including any facsimile or email, that on its face appears authentic, and that has the purported author's name on it to the same extent as if it were a document written by the author. The parties consent to this Agreement being signed or varied through electronic communication.
- 15.14. TO THE EXTENT PERMITTED BY LAW THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES REGARDING THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR OR

CONTEMPORANEOUS AGREEMENTS, ARRANGEMENTS, UNDERSTANDINGS AND COMMUNICATIONS, WHETHER WRITTEN OR ORAL.

Export

- 15.15. You acknowledge and agree that the Service may be subject to applicable export and import laws. You agree not to export any part of the Service or any direct product thereof, directly or indirectly in violation of these laws, nor may they be used for any purpose prohibited by these laws, including nuclear, chemical or biological weapons proliferation.

Agreement and Governing Law

- 15.16. The Uniform Computer Information Transactions Act ("**UCITA**") will not apply to this Agreement regardless of when and how it is adopted, enacted and further amended under the laws of the applicable jurisdiction. If UCITA is adopted and enacted in the applicable jurisdiction and, as a result of such adoption and enactment or any subsequent amendment, the parties agree to take such action as may be reasonably required, including amending this Agreement accordingly.
- 15.17. If You are located in Australia then this Agreement will be governed by the laws of New South Wales, without regard to its conflict of law principles. The parties submit to the exclusive jurisdiction of the court in the State of New South Wales, Australia. In addition the provisions of clause 16 are included in Your Agreement.
- 15.18. If You are located in the United Kingdom then this Agreement will be governed by the laws of England and Wales, without regard to its conflict of law principles. The parties submit to the exclusive jurisdiction of the court in London, United Kingdom. In addition the provisions of clause 17 are included in Your Agreement.
- 15.19. If You are located in the United States then this Agreement will be governed by and construed in accordance with the applicable laws of the State of California. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in the County of San Mateo, California, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in the County of San Mateo, California generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding this clause, claims for equitable relief may be brought in any court with proper jurisdiction within the United States. BOTH PARTIES AGREE TO WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF THE DISPUTE OR CLAIM, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, BETWEEN ANY OF THE PARTIES ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS AGREEMENT.
- 15.20. If You are located in any country other than Australia, United Kingdom or the United States, then this Agreement will be governed by the laws of New South Wales, without regard to its conflict of law principles. Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English.

16. Additional Clauses Australia

Only where You are located in Australia will the following provisions apply:

- 16.1. Where You are entitled to the benefits of the Australian Consumer Law, and You are accessing the software under a "consumer contract" as defined by the Australian Consumer Law, then the provisions of clauses 16.2 to 16.2 apply.
- 16.2. This Agreement, including clauses 6, 8, 13, 14 and 15.1 must be interpreted subject to the provisions of the Australian Consumer Law. Clauses 6.1 to 6.3 of this Agreement do not apply to You; You are entitled to the statutory guarantees provided under the Australian Consumer Law. The following

provisions are included in this Agreement:

- (a) **Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- (b) You may send us any notice relating to a claim under the Australian Consumer Law in accordance with the Australian Consumer Law.
- (c) You may also have the right to terminate this Agreement in accordance with Australian Consumer Law.
- (d) To the extent permitted by law, Our liability for breach of a statutory guarantee under sections 60 to 62 of the Australian Consumer Law is limited to one or more of the following, at Our option:
 - (i) supplying the services again; or
 - (ii) payment of the cost of having the services supplied again.

Warranty Against Defects

- 16.3. Where You are entitled to the benefits of the statutory guarantees under sections 60 to 62 of the Australian Consumer Law then Regulation 90 (issued under that Act) applies. Accordingly, We provide You with the following information as is required by Regulation 90:

The services that are provided to remedy any defect in the Service are a "Warranty Against Defects" as defined in Regulation 90. These services are provided by Total Synergy (A/E/C) Pty Limited ABN 31 081 067 950 of Level 15, 99 Mount Street, North Sydney 2060, telephone number +61 2 8197 9000 email address help@totalsynergy.com

In order to make use of this service You must contact Our support desk by email during the period of this Agreement:

Email address help@totalsynergy.com

When You make use of this service, We will use our best efforts to provide a remedy or a workaround for any defect in the Service in a timeframe that is reasonable given the nature of the issue and the impact on Your business operations.

The costs for the service that Total Synergy provides as a Warranty Against Defects are included within the Fees that are set out in the Contract Details. No additional fees are payable by You for this service. You are responsible for any expenses You incur in using this service.

"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."

The benefits that Total Synergy provides to consumers under the Warranty Against Defects are in addition to any other rights or remedies a consumer may have in respect of these goods or services under the Australian Consumer Law.

17. Additional Clauses United Kingdom

Only where You are located in United Kingdom will following provisions apply:

- 17.1. If We process any Personal Information on Your behalf when performing Our obligations or exercising Our rights under this Agreement, the parties record their intention that You shall be the Data Controller (as defined by the Data Protection Act 1988 (UK)) and We shall be a Data Processor (as defined by the Data Protection Act 1988 (UK)) and in any such case You alone shall determine the purposes for which and the manner in which all Personal Information controlled or owned by You will be processed by Us.
- 17.2. Neither party excludes or limits liability to the other party for death or personal injury caused by that party's negligence, or liability for fraudulent misrepresentation, or any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 (UK) or section 2 of the Supply of Goods and Services Act 1982 (UK).
- 17.3. Each party agrees that the limitations of liability contained in clauses 13 and 17 have been negotiated and agreed between the parties in the context of the other provisions of this agreement and satisfy the

requirement of reasonableness within the meaning of the Unfair Contract Terms Act 1977 (UK).

- 17.4. Except as provided in clause 17.5, nothing in the Agreement shall be deemed to grant any rights or benefits to any person other than the parties, or entitle any third party to enforce any term or condition of the Agreement.
- 17.5. For the purpose of the Contracts (Rights of Third Parties) Act 1999 (UK), the provisions of:
 - (a) clause 4.2 are intended to be for the benefit of, and enforceable by, each member of the Total Synergy User Community;
 - (b) clause 5.1(a) are intended to be for the benefit of, and enforceable by, Our Affiliates and their contractors;
 - (c) clause 12.2(a) are intended to be for the benefit of, and enforceable by, Our Representatives and each member of the Total Synergy User Community; and
 - (d) clause 14 are intended to be for the benefit of, and enforceable by, Our agents.
- 17.6. Notwithstanding clause 17.5, any term of the Agreement may be altered or extinguished by the parties to the Agreement without the consent of any other person.