

# General Terms and Conditions

## 1 Terms & Conditions

### 1.1 Definitions

In this Agreement, the following terms have the following meanings unless otherwise expressly stated:

**“Agreement”** means this Agreement including any Schedule attached and related Estimate / Invoice or Statement of Work.

**“Charges”** means the Charges payable under this Agreement for provision of the Software Product, Service, including any Installation Charges, Recurring Charges and Usage Based Charges and any other Charges set out in the Estimate / Invoice.

**“Consultancy Services”** has the meaning given in clause 5.1.

**“Customer”** means the Customer identified in the Estimate / Invoice and shall include any and all related bodies corporate as defined by the Corporations Act 2001 or parties identified in a Schedule to this Agreement.

**“Deliverable”** means an agreed outcome acknowledged by both Parties which is to be delivered by **SyncEzy** for the Customer pursuant to this Agreement, more particularly set out in the Estimate / **Invoice** or any *custom Project Plan* as referenced in the Invoice.

**“Documentation”** means documentation, whether in printed or electronic form, associated with SyncEzy’s Solutions and published by or for SyncEzy.

**“Hosted Services”** means the Hosted Services as specified in clause 4 in this Agreement.

**“Other Supplier”** means a Carrier telecommunications carriage service provider, or an software or hardware equipment supplier other than SyncEzy, as the case may be.

**“Estimate / Invoice”** means the Estimate or Invoice agreed by Customer by making payment to SyncEzy.

**“Service”** means Hosted Service, Integration Services, Consultancy Services, and Support Services as appropriate.

**“Service Provider”** means **3D Consulting Pty Ltd** ABN 28159855044 (Trading as **“SyncEzy”**) or such other party that SyncEzy nominates to provide the Hosted Service.

**“Hosted Service Start Date”** means the earlier of: (a) the date on which we first notify

you that the Hosted Service is ready for use; and (b) the date on which you first use the Hosted Service.

**“Software Product”** means a SyncEzy software product as stated in the Estimate / Invoice as being licensed to the Customer as specified in clause 3 of this Agreement.

**“Support Services”** mean the Support Services as specified in clause 6.

### 1.2 Content and Effect

1.2.1 This Agreement shall represent the entire and complete agreement between the parties and supersedes all prior contemporaneous agreements or representations, written or oral, with respect to the subject matter of this Agreement. Any terms and conditions attached to any purchase order or other ordering document of the Customer shall be superseded by this Agreement.

1.2.2 By continuing to maintain the subject Services with SyncEzy, the Customer is stating and acknowledging it has read and understands the terms of this Agreement and agrees to be bound by them.

### 1.3 GST

1.3.1 All prices specified in this Agreement and/or the Schedules or Estimate / Invoice attached to this Agreement are strictly net and exclusive of GST, VAT and other taxes.

### 1.4 Assignment

1.4.1 The Customer shall not assign, mortgage, charge or make over this Agreement or any part of it without the prior written consent of SyncEzy, such consent not to be unreasonably withheld. SyncEzy shall be entitled to sub-contract all or any part of its rights or obligations under this Agreement. Customer acknowledges that SyncEzy may use third party providers to supply the Hosted Service.

### 1.5 Clause Headings

1.5.1 Clause Headings are for ease of reference only and do not form part of this Agreement for the purpose of interpretation.

### 1.6 Appropriate Law

1.6.1 This Agreement and all the terms, provisions and conditions of this Agreement and all questions of instruction, validity and performance under this Agreement shall be governed by the laws of Victoria and subject to



the exclusive jurisdiction of the courts of Australia.

### **1.7 Waiver**

1.7.1 The waiver by either party of a breach or default of any provision of this Agreement shall not be construed as a waiver of any succeeding breach or default of the same or other provisions.

### **1.8 Severance**

1.8.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the said invalidity or unenforceability shall not affect the other provisions of this Agreement and all other provisions shall remain in full force and effect. The parties hereby agree to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, the legal and the commercial objectives of the invalid or unenforceable provisions.

### **1.9 Personnel**

1.9.1 Both parties agree that during the term of this Agreement and for a period of 12 (twelve) months after its termination that they will not approach or solicit each other's personnel with a view to offering them employment. Liquidated damages for breach of this provision will be equal to the gross salary or fees of that person for the first 12 (twelve) months of his/her new employment or contract.

### **1.10 Invoicing**

1.10.1 SyncEzy will endeavour to invoice you monthly or as specified in any Estimate / Invoice but reserves the right to bill at different intervals. Unless otherwise specified all invoices will be electronically issued to Customer's listed email address. Invoices issued to anything other than an email address may incur additional charges. SyncEzy will provide you with a breakdown of the fees and Charges payable in each invoice. Our records and/or any relevant Other Supplier's records will be conclusive evidence of usage of the Service and the Charges payable by you. Notwithstanding this, you may dispute an invoice if you reasonably believe that you are not liable to pay the Charges because of an inaccuracy, omission or error in the invoice. For the avoidance of doubt, this does not affect your obligation to make payment in full by the due date. If the parties agree that the dispute is valid, your account will be credited the relevant amount.

1.10.2 SyncEzy will invoice for, and you will be liable for all Charges in respect of the Service commencing on and from the Service Start Date.

1.10.3 Unless otherwise expressly stated, we will bill you:

a) in advance for Setup / Installation Charges, Monthly or Annual Recurring Charges and all other Charges; and

b) in arrears for Usage Based Charges.

1.10.4 Except as otherwise agreed in writing the Customer agrees to pay all invoices properly submitted by SyncEzy on the terms specified upon the invoice. Without prejudice to any other rights or remedies available to SyncEzy under this Agreement SyncEzy reserves the right to charge interest on overdue balances at 2 (two) percent over the Bankwest Limited base overdraft rate at the time.

### **1.11 Copying**

1.11.1 The Customer may not make any copies of any Software Product supplied pursuant to this Agreement except such copies as are required for back up or archive purposes only. Any such copies are subject to the conditions set out in this Agreement.

### **1.12 Loss of Data**

1.12.1 Other than as covered elsewhere in this Agreement, including Schedules, SyncEzy shall not be liable for loss of data or recovery of such data whether or not that loss can be attributed to an error in a Software Product supplied by, under warranty from or supported by SyncEzy. The Customer must ensure that appropriate back-ups and/or copies of data are taken upon a regular basis.

### **1.13 Confidentiality**

1.13.1 Each party to this Agreement shall treat as confidential all Confidential Information of the other party obtained from the other pursuant to carrying out this Agreement (including, in the case of SyncEzy, all information contained or embodied in the Customer Data of which it may become aware) and shall not divulge such information to any person without the other party's written consent. Each party shall ensure that its employees and sub-contractors are aware of

and comply with the provisions of this Clause to the extent necessary for the proper performance of the Agreement.

1.13.2 (Without giving the party receiving the information any licence or other right to use such information) Clause 1.13 shall not extend to information:

- a) which a party is required by law to disclose; or
- b) which a party rightfully possessed prior to the commencement of discussion leading to the Contract; or
- c) which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 1.13); or
- d) which comes into the possession of a party other than as a result of a breach of these Terms or subject to conditions of confidentiality; or
- e) is trivial or obvious.

1.13.3 Without limiting the generality of clause 1.13.1, the Customer acknowledges it may not, directly or indirectly: (i) use such SyncEzy's Confidential Information to create any computer software program or user Documentation, or (ii) use or disclose such SyncEzy's Confidential Information except as expressly permitted by this Agreement. Customer may not disclose to any third party, whether orally or in writing, the results of any quantitative analysis (benchmark tests) of the Software Product. Customer shall promptly notify SyncEzy of any unauthorised use or disclosure of such Confidential Information that comes to its attention and provide reasonable assistance to SyncEzy (at SyncEzy's expense) in the investigation and prosecution of such unauthorised use or disclosure.

1.13.4 SyncEzy will indemnify and keep the Customer fully and effectually indemnified from and against all actions, proceedings, claims, demands, damages or other liability, or costs (including legal costs on a full indemnity basis) which the Customer may suffer or incur as a result of any breach by SyncEzy of its obligations in Clause 1.13.1.

1.13.5 Customer will indemnify and keep SyncEzy fully and effectually indemnified from and against all actions, proceedings, claims, demands, damages or other liability, or costs (including legal costs on a full indemnity basis) which SyncEzy may suffer or incur as a result of any breach by the Customer of its obligations in Clause 1.13.1.

## **1.14 Publicity**

1.14.1 SyncEzy may use individual's names and addresses as may be provided to SyncEzy within the SyncEzy group of companies worldwide in order to perform its obligations under this Agreement. SyncEzy requires Customer approval prior to using the Customer name as a user of the service in the context of, for example, media releases, speeches and promotional material.

## **1.15 Newsletter**

1.15.1 SyncEzy may, from time to time, provide a periodic technical newsletter by email to Customer providing details of technical tips and notification of upgrade availability.

1.15.2 Customer consents to receiving notifications regarding SyncEzy Software Product or Service by email.

## **1.16 Notices**

1.16.1 Any notice required or permitted under this Agreement shall be in writing or sent by email, registered post, overnight courier service or facsimile provided such facsimile is confirmed as received to the address set out above or to such other address which the parties may have specified in writing from time to time and shall be deemed to be served two working days following the date of posting or within one working day of transmission in the case of facsimile where a working day shall mean Monday to Friday excluding public holidays.

## **1.17 Scope of Services**

1.17.1 SyncEzy will, subject to the terms of this Agreement, provide the Software Product and Services set out in the Estimate / Invoice attached or as updated from time to time. Such Estimate / Invoice also sets out the agreed unit price, initial contracted volume or specification and the Service Level Agreement percentage with respect to each component of any Hosted Service as at the date of initial Agreement. The price and SLA with respect to the Hosted Services set out in the Estimate / Invoice is fixed for the initial term of this Agreement but may change for subsequent additional periods on receipt of Customer's approval. Any additional services shall be included as addenda to or a further Estimate / Invoice.

## **1.18 Material Breach**

1.18.1 The Customer agrees to pay any sums due under this Agreement upon the due date specified in the invoice, Schedules or Estimate

/ Invoice attached to this Agreement. Failure to pay in accordance with the terms of this Agreement shall be deemed to be a material breach of this Agreement.

## 2 Term and Termination

2.1.1 The initial term of this Agreement is as specified in the Estimate / Invoice and commences from the date of this Agreement or commencement of service delivery and the term shall automatically renew in annual increments thereafter unless terminated by either party in accordance with this Agreement.

2.1.2 Except as provided in clause 6.2.3 regarding Support Services, either party may terminate the Agreement after its initial term for any reason by giving thirty (30) days written notice to the other party.

2.1.3 Either party shall be entitled to terminate this Agreement if the other ceases to exist, becomes insolvent or bankrupt or being a company is wound up or is deemed unable to pay its debts or has a receiver appointed over any part of its assets, or if the other party commits a material breach of this Agreement and fails to remedy such breach within thirty days after having been given written notice to do so.

2.1.4 Where the Agreement is breached by SyncEzy, this Agreement may be terminated forthwith by the Customer giving written notice to SyncEzy.

2.1.5 On termination of this Agreement for any Hosted Service, Customer shall cease to use the Hosted Service and SyncEzy shall promptly return to Customer any documents, data and other information created and used for the purposes of this Agreement. Customer will be required to advise SyncEzy on the alternate service arrangement and facilitate handover of IP and data. SyncEzy shall be entitled to Charge its reasonable costs for the provision of this Service.

2.1.6 Customer will be liable for all Charges up to the date of termination. Such Charges shall be due on the terms as stated in the invoice.

2.1.7 The termination of this Agreement, any part of it, or of the provision of the Service (howsoever occasioned) shall not affect:

- a) Any accrued rights, obligations or liabilities of either party;
- b) The coming into force or the continuance in force of any provision hereof which is implied or expressly

intended to come into force or continue in force on or after such termination.

2.1.8 Without prejudice to any rights or remedies to the injured party under this Agreement the termination (howsoever occasioned) shall cause the cancellation of licenses for any and all Software Product supplied hereunder.

2.1.9 The effect of the notice of cancellation of the license for a Software Product supplied hereunder is that the Customer must immediately cease use of the Software Product and any Documentation relating to the Software Product to SyncEzy, take all such steps to destroy any copies of the Software Product under the control of the Customer, have all Software Product removed from all computers operated by or controlled by the Customer, and procure that a director of the Customer warrant in writing to SyncEzy that these provisions have been adhered to.

2.1.10 If this Agreement is terminated for any reason then clauses 1.6 Appropriate Law, 1.9 Personnel, 1.13 Confidentiality, 3.5 Copyright and Intellectual Property Rights shall continue to have effect as shall any other provision which by their nature or implication were intended to come into or continue in force on or after such termination.

## 3 Software Product

### 3.1 License

3.1.1 For the purpose of this Agreement Software Product shall refer to the Software Product supplied to the Customer under this Agreement as set out in the Estimate / Invoice for installation on Customer's equipment.

3.1.2 SyncEzy grants to the Customer a non-exclusive, non-transferable, site and/or territorially specific license to use the Software Product, including the Documentation, for the term of this Agreement for the Customers own internal data processing and business use only and subject to the terms and conditions of this Agreement. SyncEzy or its licensors retain all copyright, proprietary and intellectual property rights in and to the Software Product.

3.1.3 The license to use the Software Product shall be strictly according to such limits upon the use of the software and upon a particular item or type of equipment and/or such limits upon the number of users as shall be specified in any quotation or proposal supplied in writing by SyncEzy and/or specified in the Schedules

or Estimate / Invoice attached to this Agreement.

3.1.4 This Agreement prohibits any use of the Software Product as a service bureau, rental, or for providing data processing services to third parties, or by third parties on any timesharing basis.

3.1.5 Customer shall use the Software Product in accordance with the law, including without limitation, any laws relating to processing personal data and/or privacy.

### 3.2 Audit

3.2.1 SyncEzy shall have the right to conduct a remote audit of Customer's use of the Software Product on ten (10) days' advance written notice. SyncEzy shall also have the right to embed technological audit mechanisms in its Software Product and to conduct audits by use of such mechanisms with or without further notice. If any SyncEzy initiated audit reveals unauthorised use or use in excess of licensed capacity, within 30 days from receipt of notice by SyncEzy stating the amount of unlicensed use of Software Product, Customer shall pay SyncEzy for use of the unlicensed Software Product and technical support and maintenance at SyncEzy's current market prices.

3.2.2 Each audit under Section 3.2.1 shall be at SyncEzy's expense, except that, if the underpaid fees exceed five percent (5%) of the license fees paid, then Customer shall pay SyncEzy's reasonable costs of conducting the audit. Instead of, or in addition to, an audit SyncEzy reserves the right to request a written statement of compliance with the terms of this Agreement and applicable Software Product Licenses, and Customer shall comply with such request.

### 3.3 Delivery

3.3.1 SyncEzy shall provide access to a customer portal and any related control procedures in machine readable form and where available one copy of the associated Software Product user Documentation or provide access to SyncEzy website for Customer to download the Software Product. The specification of the Software Product shall be defined as being the functions detailed in the current Software Product user Documentation or such other written specification as may be agreed between the parties to this Agreement and the Customer

hereby accepts such specification as being in accordance with its requirements.

### 3.4 Warranty

3.4.1 For the term of the agreement from the date of delivery SyncEzy shall provide the support described below in respect of the Software Product free of charge under warranty.

a) SyncEzy shall correct or cause to have corrected any error in the Software Product notified to SyncEzy during its normal working hours or to the mailbox [support@syncezy.com](mailto:support@syncezy.com) . For the purposes of this Agreement an error shall be defined solely as a deviation from or failure to work in accordance with the specification.

b) SyncEzy shall deliver one copy of the correction of an error (as described under Clause 3.4.1.a above) in machine-readable form together with sufficient instructions to enable the Customer to install or apply the said correction. If exceptionally and at its sole discretion SyncEzy attends the Customer's premises to apply the correction such attendance shall be free of charge under the limited warranty. If the Customer requests the attendance of SyncEzy at its site to install or apply the correction then the time and travel costs associated with such an attendance shall be chargeable at the then current SyncEzy price list for such a service.

c) SyncEzy will use reasonable endeavours to correct an error as soon as reasonably practical and with due regard to the nature and effect of the error but shall not be liable for any loss and/or damage arising from or out of any delay in providing such error correction.

3.4.2 SyncEzy does not warrant the fitness for purpose or suitability of the operation of any Software Product nor that the Software Product will meet the Customer's expectations.

3.4.3 SyncEzy does not warrant that any Software Product shall operate uninterrupted or error free.

3.4.4 SyncEzy shall not be liable to correct any error arising from improper use, operation, modification or neglect of a Software Product or the failure on the part of the Customer to

observe any instruction provided by SyncEzy in relation to the use of the Software Product.

3.4.5 In no event shall SyncEzy be liable for any indirect, consequential, incidental liquidated and/or special damages of any kind (including, without limitation, lost revenues or profits, lost data, work stoppage, computer failure or malfunction), even if it has been advised of the possibility of such damages. This clause does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.

3.4.6 The limited warranty provided under this clause in respect of the Software Product is in lieu of any and all other warranties or conditions, express or implied, including any warranties of satisfactory quality or fitness for a particular purpose all of which are excluded to the fullest extent permitted by law. SyncEzy has authorised no other warranty and the Customer has not relied upon any other warranty in its decision to execute this Agreement.

3.4.7 The sole remedy available to the Customer and the sole liability of SyncEzy for a breach of the limited warranty set out in this clause **shall not exceed the license fee paid** for the month during the period of the breach for the Software Product concerned.

3.4.8 No action, regardless of form, arising out of the transactions under this Agreement, may be brought by Customer for any period greater than the one year after Customer became aware or reasonably should have become aware of the occurrence of the events giving rise to the cause of action.

### **3.5 Copyright and Intellectual Property Rights**

3.5.1 The Customer hereby acknowledges that it has no proprietary and/or other rights in or to the Software Product or any amendment, modification, new version or new releases thereof except that of usage for the Customers own internal data processing and business use.

3.5.2 The Customer acknowledges that all existing and future copyright, patent, trademark and other intellectual property and proprietary rights arising out of or related to the Software Product shall remain the sole property of SyncEzy or its licensor(s).

3.5.3 The Customer agrees not to change, remove or obscure any copyright notices or

proprietary rights notices attached to the Software Product or its associated Documentation.

3.5.4 Save as permitted by the law the Customer agrees not to cause or permit the reverse engineering, disassembly, decompilation, translation, or adaptation of any of the Software Product.

3.5.5 SyncEzy warrants that it owns or has rights to license the Software Product and agrees to hold the Customer harmless from any claim that usage of the Software Product infringes any patent, trademark, copyright or other intellectual property of any third party; providing:

- a) the Customer promptly notifies SyncEzy in writing of any such claim; and
- b) the Customer grants to SyncEzy the sole control of the defence, at SyncEzy's cost, of any such claim; and
- c) the Customer agrees to undertake such reasonable steps as SyncEzy may request in relation to this matter. These may include, but are not limited to, replacement of the version or release of the Software Product concerned free of charge with the latest version or release of that software, SyncEzy procuring at its own expense the Customers right to continue using the offending software or SyncEzy replacing at its own expense the offending software or Documentation with material designed to perform the same function as the offending material.

3.5.6 The foregoing states the entire liability of SyncEzy to the Customer regarding the infringement of any intellectual property rights of any third party. SyncEzy shall have no liability for any claim for infringement of a third party intellectual property right based upon use with or combination of Product supplied with programs or data not supplied by SyncEzy or use other than as prescribed in the Documentation and/or pursuant to this Agreement.

### **3.6 Data Security**

3.6.1 SyncEzy operates on a secure cloud environment with all the access to the servers and api keys protected by 128 Bit SSL Encryption. The sites are also protected

against brute force attacks by monitoring and blocking software.

### **3.7 Acceptance**

3.7.1 Upon receipt of the Software Product the Customer shall conduct such tests, as it deems necessary within 7 days. If it is agreed that SyncEzy will install and test the Software Product then the Customer shall make available an authorised representative to witness the acceptance tests carried out by SyncEzy and to approve the same in writing. Unless notified in writing within 14 days of the date of receipt by the Customer of the Software Product to the contrary SyncEzy shall be entitled to assume that the Customer has accepted the Software Product 7 days from its delivery.

### **3.8 Export**

3.8.1 Customer expressly acknowledges that the licence to use the Software Product granted under this Agreement is site specific and territorially limited to the country where this Agreement is executed, unless otherwise agreed in writing by SyncEzy. Customer warrants that it will not export, either directly or indirectly, any Software Product, Documentation, or information about the Software Product or Documentation from the country of installation without first obtaining all necessary export approvals [including without limitation those of the country of installation and the United States of America, the "Export Laws"], and SyncEzy's prior written consent, such consent will not be unreasonably withheld. Customer warrants that the Software Product shall not be used for any purpose prohibited by the Export Laws, including without limitation nuclear, chemical or biological weapons or proliferation.

### **3.9 SyncEzy Reliance on the Customer**

3.9.1 SyncEzy will rely (non-exclusively) on research and suggestions from the Customer to determine enhancements and modifications to the Software Product ("software variations"), and/or test the commerciality of potential software variations or new services (an "offering").

3.9.2 The Customer may also be invited to participate in pilot programs to:

- a) test and verify that an offering works as expected in real-world Customer environments,

- b) test the market acceptance of the offering,

- c) refine the details of the offering based on feedback from pilot group participants,

- d) practice the delivery and implementation of the offering,

- e) determine the level of support required after a full deployment,

- f) provide a decision checkpoint for proceeding with the commercialisation or to adjust the commercialisation plan to resolve issues that may jeopardise the success of the offering.

3.9.3 The terms of participation in a pilot program, including any commitment of additional time and resources and the overall benefits to the Customer will be advised at the time of invitation.

3.9.4 While it is at the sole discretion of SyncEzy whether or not it will adopt any software variation or offering, the Customer acknowledges that it will have no claim to the title, ownership, copyright intellectual property, proprietary and/or patent with respect to the software variation or offering or any commercial benefit derived from it. All such rights in and to all software variations made, whether paid or unpaid by the Customer, will reside with SyncEzy.

## 4 Hosted Services

### 4.1 Service Terms

4.1.1 SyncEzy shall provide through its Service Provider the Hosted Services for SyncEzy Software Products and number of initial users as set out in the Estimate / Invoice.

4.1.2 SyncEzy grants to the Customer a non-exclusive, non-transferable, site and/or territorially specific license to use the Software Product, including the Documentation, for the term of this Agreement for the Customers own internal data processing and business use only and subject to the terms and conditions of this Agreement as part of the Hosted Service. SyncEzy or its licensors retain all copyright, proprietary and intellectual property rights in and to the Software Product. All other terms of this license shall be as set out in Clauses 3.1, 3.3, 3.4, 3.5, 3.6 and 3.7.

4.1.3 The Hosted Service shall commence from the Service Start Date.

4.1.4 The Hosted Service will be available 24x7 (24 hours a day, 7 days a week) over the entire calendar year. There are no exceptions to these availability hours. This is not a guarantee that the service may not be interrupted due to technical faults or for the performance of necessary maintenance and updates as stated in clause 4.2.

4.1.5 You may vary the Hosted Service at any time after the expiry of the initial Term by giving us written notice of your intention to vary the service with additions to take effect for the full calendar month of the start date and terminations to take effect on the last day of the month.

### 4.2 Hosted Service Performance

4.2.1 It is technically impractical to guarantee that the Hosted Service will be continuous or fault free. SyncEzy will undertake to provide the Hosted Service using all the reasonable skill and care of a competent carriage service provider.

4.2.2 Where you report faults with the Hosted Service, SyncEzy will promptly perform, or arrange to be performed, appropriate tests to determine the cause of any fault. You must provide all necessary assistance to enable repair of any fault which is our responsibility.

4.2.3 Where SyncEzy determines, acting reasonably, that there is a fault within the SyncEzy network, SyncEzy is responsible for correcting the fault.

4.2.4 SyncEzy is not responsible for any fault which is within the network of any interconnected Other Supplier. SyncEzy will notify that Other Supplier of the fault and request that the fault be corrected promptly but SyncEzy will bear no further liability or responsibility.

4.2.5 Where SyncEzy responds to a fault reported by you concerning the Hosted Service and SyncEzy determines, acting reasonably, that:

- a) the fault is caused by Your Equipment, or
- b) no fault in the Service is found to exist, then
- c) SyncEzy may charge you additional charges calculated by reference to our current standard man-hour rate for time expended.

4.2.6 SyncEzy guarantees service uptime at the percentage indicated in the SLA column of the Estimate / Invoice.

4.2.7 SyncEzy guarantees support response and issue resolution time as outlined within Clause 9 at the percentage indicated in the SLA column of the Estimate / Invoice.

4.2.8 The percentage indicated refers to that proportion of time during any calendar month that the Hosted Service is guaranteed to be available on the Internet or delivery connection. For clarity, the complement of the SLA percentage (i.e.,  $1 - \text{SLA} \%$ ) is the amount of tolerable unscheduled downtime before SLA Penalties apply.

4.2.9 If the indicated SLA percentage is not achieved within any calendar month, an SLA penalty shall apply against SyncEzy if claimed and proven, calculated at 5% of the monthly service charge per 0.1% interval by which the achieved uptime falls below the SLA percentage, subject to a maximum of the monthly fee for the Hosted Service.

4.2.10 The SLA Penalty shall not apply in circumstances beyond SyncEzy's ability to control such as a major telco network failure, during periods of maintenance as set out in Clauses 4.6 or 4.7, or where the customer's account at the time of the SLA breach was in financial arrears.

### 4.3 Hosted Service Inclusions

4.3.1 Unless amended in the Estimate / Invoice, the Hosted Service includes:



- a) all aspects of server ownership, secure housing, operation, maintenance and patching,
- b) all required software licences for the agreed service,
- c) unlimited data traffic except media streaming, the requirement for which must be separately disclosed,
- d) 24 hours /7 days per week server and application monitoring,
- e) 24/7 emergency telephone hotline and on-line job ticket system at [support@syncezy.com](mailto:support@syncezy.com).
- f) automatic daily back-up of data to secondary data centre as specified in this Agreement,
- g) Disaster Recovery Strategy and Support.

#### 4.4 Hosted Service Exclusions

4.4.1 The Hosted Service does not include:

- a) data or application migration, cleansing or conversion,
- b) point-in-time backups or restoration,
- c) delivery of data on media,
- d) on-site training,
- e) customisation,

4.4.2 These services are available upon request at a quoted price

#### 4.5 Suspension

4.5.1 Although SyncEzy will endeavour to give you as much notice as reasonably practicable, SyncEzy may, without liability, suspend the Hosted Service immediately (including without notice):

- a) if SyncEzy is required to comply with an order, instruction or request of a Regulator, government agency, emergency services organisation or other competent authority,
- b) if SyncEzy is required to undertake emergency repair, maintenance or service of any part of the SyncEzy network (or an interconnected Other Supplier is required to undertake such emergency work on its network),
- c) if it is reasonably required to reduce or prevent fraud or interference within the SyncEzy network,

d) in order to enable SyncEzy to comply with any law, or

e) as an alternative to the exercise of our rights of termination under this Agreement.

4.5.2 If SyncEzy suspends the Hosted Service pursuant to clause 4.5.1(e) you acknowledge and agree that:

a) SyncEzy may charge you a re-establishment fee,

b) while the Hosted Service is suspended, the Supplier will continue to incur costs of supply associated with keeping that Service in a suspended state; and

c) except in the case of Usage Based Charges, all Charges in relation to the Hosted Service will continue to accrue while suspended and will be payable by you.

#### 4.6 Scheduled Maintenance

4.6.1 The Service Provider may perform routine system maintenance between the hours of 19:00 and 20:00 (AWST) every Friday. During this timeslot the service may become unavailable for no more than 30 consecutive minutes. This timeslot will be referred to as "scheduled system maintenance" throughout this Agreement.

4.6.2 Service downtime during this scheduled maintenance window does not count towards the SLA Penalty described in Clause 4.2.9.

4.6.3 It may also become necessary to eliminate critical security or safety risk that SyncEzy perform urgent maintenance at a time other than the scheduled maintenance window. In this case, SyncEzy will provide as much advance notice as is possible, such disruption shall not be for more than two (2) hours duration and wherever possible shall not occur between 6am and 6pm AEST on a business day. Hosted Service downtime during this scheduled maintenance window does not count towards the SLA Penalty described in Clause 4.2.9.

#### 4.7 Unscheduled Maintenance

4.7.1 The Service Provider may perform unscheduled system maintenance provided that the Customer is notified seven days prior to the intended timeslot. If the maintenance is classified as "emergency" work, this time may be reduced to 24 hours. System maintenance is deemed to be an "emergency" if any Service Provider services are highly likely to be

adversely affected if no action is taken prior to the normal scheduled system maintenance. The Service may become unavailable for no more than 30 consecutive minutes. These additional times are referred to as "unscheduled system maintenance" throughout this Agreement.

4.7.2 If the Customer requires the Service to be available during scheduled system maintenance, they must contact the Service Desk as defined in Customer Support and make the request no later than 12:00 Wednesday and no earlier than 08:30 on the Monday prior to the scheduled timeslot. The Customer may request to stop up to two consecutive scheduled system maintenances. System maintenance will only be halted on request if the work scheduled will affect the availability of reliability of the Service.

4.7.3 The Customer may request the Service to be available during unscheduled system maintenance and make the request using the defined Customer Support procedures no later than 24 hours prior to the unscheduled timeslot, or one hour prior to the unscheduled emergency timeslot. If the stopped procedure is to correct a fault or potential fault that may affect the Service, all availability, reliability and performance targets defined in this Agreement are void until the corrective action has been completed during a later timeslot.

#### **4.8 Service Availability**

4.8.1 The Service Provider will seek to deliver a service with 99% availability during the designated services hours.

4.8.2 The availability is measured by taking a service sample of a subset of sites every 5 minutes and then calculated by using the measured samples over a single calendar month, excluding any time period[s] classed as exceptions. A service outage is defined to be a break of five or more minutes in the service delivery (two failed consecutive samples).

4.8.3 Service unavailability due to a fault in the Customer supplied site code will not be included in our service availability calculations. Service unavailability due to any circumstances beyond our reasonable control (such as connectivity faults in external networks) is also excluded.

#### **4.9 Reliability**

4.9.1 During the defined service hours the mean-time between failures [MTBF] will not fall below one calendar month. A service failure is a period of fifteen or more minutes during

which the service is unavailable and unusable by the Customer or the User (four failed consecutive). For reporting purposes, a "near" service break is defined to be a break of more than ten but less than fifteen minutes.

4.9.2 Service breaks are monitored through the defined service availability measurements by counting any four or more consecutive samples that show the service to be unavailable and through incidents recorded by our Service Desk.

#### **4.10 Service Performance**

4.10.1 Service performance covers the target responsiveness of the hosting infrastructure from a network access and code execution point of view, and not the speed at which content is served.

4.10.2 Network latency is the time it takes a single packet to travel from source to destination and back again. Network latency is measured at 15 minute intervals and averaged over an entire calendar month. Network latency within our own network will not exceed 15ms (due to firewalls, intrusion detection and load balancing). The average international latency will not exceed 250ms and the domestic average will not exceed 150ms to our network border.

4.10.3 Packet Loss is the difference between the number of transmitted packets and the number of packets that arrived at their destination. Packet loss will not exceed 2%.

4.10.4 The service has been designed for reliability and availability over speed. The performance, however, is expected to be of an acceptable level to the User. Any workstation response times that exceed 40 seconds for a period of 10 or more minutes must be reported immediately to the Service Desk.

4.10.5 Performance loss due to code and components not developed or provided by the Service Provider is excluded from calculations.

#### **4.11 Functionality**

4.11.1 Errors in hardware, infrastructure and software components developed, provided or managed by the Service Provider that bring the availability or reliability below the target levels are regarded as a breach of this Agreement. Externally developed or supplied components, hardware or infrastructure that is beyond the Service Provider's reasonable control will not be included in any calculations, and therefore will not impact any availability or reliability results.

4.11.2 During an outbreak or attack on the Service Provider's infrastructure (breach of security or denial of service), the Service Provider will aim to keep the Service available but performance may be severely affected to the point that availability cannot be controlled. In extreme cases the Service may be stopped for up to an hour to implement emergency fixes to avoid total system and service failure.

4.11.3 During major security attacks, the Customer will be kept informed by the Service Provider on the status, planned action and estimated restoration times on a half hourly basis. The Customer may also be approached to assist in developing code changes, should that be required. Since these attacks originate on external infrastructure, availability and reliability calculations will be excluded during these periods.

4.11.4 The Service Provider will aim to keep the Service data and infrastructure safe by any means necessary.

#### 4.12 Change Management Procedures

4.12.1 All changes to the Service Provider's infrastructure go through a three phase change procedure. In almost all cases changes will not affect the availability; however, the Customer will be notified of any alterations that will change the functionality of the Service. In some cases, changes may require some programming alterations to the ASP web applications or SQL Server functionality used by the Service, which must be completed by the Customer. The timeframe for Customer change will be negotiated with the Customer on a case by case basis. The three phases are as follows:

Phase 1	Internal testing and staging of the change using hardware and network infrastructure independent to the production environment, but closely simulating the production network.
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Phase 2	Partial rollout into the production network by removing a single member of redundant infrastructure and updating just those devices. This may not always be possible in the case of some devices such as core network routers.
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Phase 3	Full rollout onto all remaining devices.
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4.12.2 Changes are made during scheduled system maintenance. Some more urgent changes may be escalated and performed through unscheduled system maintenance as described in this Agreement.

4.12.3 Change management procedures will also be applied to any lower level components developed for the Service by the Customer, such as COM/COM+ objects and packages and third party add-ons that might be required.

4.12.4 Complex web applications may include more sophisticated roll out procedures, tailored around the requirements for that particular application.

#### 4.13 IT Service Continuity

4.13.1 Our backup set includes the backup of the root folder, and all sub folders and files, of each AWS Instance and its associated web access logs. The central folder containing the common code components is also included. All SQL Server databases use a "simple" logging method, and are also part of the backup set, including the central database common to all sites.

4.13.2 Our backup schedule is a full back up every day of the week, including weekends. During the backup procedure site performance may be affected, however, availability is not. SyncEzy retain seven days' worth of daily backups on a weekly rotation.

4.13.3 It is possible to restore data that is available as a result of this backup set and schedule. Point in time restoration of SQL Server is not supported. Any data loss as a result of any action by the Service Provider will be restored free of charge as quickly as

possible and any call to the Service Desk indicating this will be treated as an emergency call with the same target response and fix times. Any data restoration due to the actions of the Customer or the User will be treated as a standard support call, and may incur a service fee.

4.13.4 The Customer is responsible for the version control of the site content and retaining backups of each version, if this is required.

#### **4.14 Security**

4.14.1 Security issues are a core part of the Service Provider's design, structure and change management. Security principals and policies are enforced throughout without exception. As a result, changes to the hosting environment due to changes in the programming code of the Service may be blocked until all security concerns are fully solved as part of our Change Management.

4.14.2 Usernames and passwords are one line of defense, where the responsibility of ensuring they remain confidential lies with the Customer.

4.14.3 If at any stage any of the user credentials become known to any un-trusted parties, please contact the Service Desk as defined in Support Services (clause 8.3) and log an emergency call to have it immediately changed. Any programming changes that need to be made to the Service must be done by the Customer. Any effect on service availability or reliability will not be included in any of our calculations.

4.14.4 If at any stage activity is noticed against any of the user accounts for the Customer or the User, the account will be locked until the Customer contacts the Service Desk with an explanation.

4.14.5 All sites are protected through two layers of firewalls and intrusion detection systems that are actively monitored and updated as part of our daily system management routines. In the event of a security attack, denial of service defenses may limit the rate of connections to servers to avoid critical failures due to excessive network traffic. Unfortunately, this may also affect legitimate traffic; however, once the attack subsides the Service will still be functional. During the attack, every effort will be made to ensure that the duration is minimised kept as short as possible.

#### **4.15 Data Security**

4.15.1 SyncEzy takes reasonable measures to maintain the privacy and integrity of the data and files stored as part of the Hosted Service. However, Customer acknowledges that 100% security cannot be guaranteed in internet systems. SyncEzy cannot be held responsible for breaches in data integrity if due process has been applied.

4.15.2 SyncEzy abides by the National Privacy Principles enshrined in the Federal Privacy Act 1988 (as amended) and the Internet Industry Association's Privacy Code.

4.15.3 SyncEzy acknowledges Customer's absolute and sole ownership and confidentiality in its data and SyncEzy will maintain a policy not to view, copy, use, retain or restrict Customer's authorised access to any of its data.

4.15.4 Customer agrees that SyncEzy has the right to monitor the servers electronically and may have an obligation to disclose information under the law or to protect itself from claims by a third party or parties.

4.15.5 Customer represents, warrants and undertakes to SyncEzy that all necessary notifications and consent processes have been, and will continue to be made under the National Privacy Principles in the Privacy Act 1988 in relation to the use of the Hosted Service and Customer Data, and that throughout the term of the Contract it will comply with the terms of that Act and of any other applicable legislation from time to time in force in any territory in which the Customer carries on business, in each case insofar as applicable to the Customer in relation to the use of the Hosted Service or Customer Data in accordance with these Terms.

4.15.6 Without prejudice to the generality of Clause 4.15.1, the Customer undertakes that it will not export any Customer Data to any territory except as permitted by the Privacy Act 1988.

4.15.7 Without prejudice to the generality of Clause 4.15.1, the Customer undertakes that it will, to the extent required by the Privacy Act 1988, inform individuals whose e-mail addresses are included in the Customer Data, that the Customer uses service providers to handle Customer Data on its behalf. Customer accepts the obligation of notifying individuals to the effect that it is not necessary for SyncEzy to make any additional communications with individuals in order to meet any obligations it may have under National Privacy Principle 1.5.

4.15.8 Customer will indemnify and keep SyncEzy fully and effectually indemnified from and against all actions, proceedings, claims, demands, damages or other liability, or costs (including legal costs on a full indemnity basis) which SyncEzy may suffer or incur as a result of any breach by the Customer of Clauses 4.15.5, 4.15.6 and 4.15.7.

4.15.9 Customer undertakes to provide to SyncEzy a copy of its company privacy policy prepared in accordance with National Privacy Principle 5.

#### **4.16 Acceptable Use**

4.16.1 Customer agrees not to use any SyncEzy Hosted service in connection with any unlawful business or activity, including spamming, or any activity which infringes the rights of others including SyncEzy, including the unlicensed use of software or intellectual property.

4.16.2 Customer agrees not to hack or attempt to hack, reverse engineer, intrude, view, copy or alter any data or systems used or hosted by SyncEzy. Where the customer is authorised to alter data this clause does not apply. SyncEzy's monitoring software will raise alerts to such attempts which will be prosecuted to the full extent of the law.

4.16.3 Customer agrees not to resell or re-badge any SyncEzy Hosted Service without the express approval of SyncEzy.

4.16.4 SyncEzy reserves the right not to host certain content in its sole discretion and to immediately withdraw service and take down content with respect to any violations of these terms and conditions. SyncEzy may also have a legal obligation to refer such content or activity to the relevant authority.

4.16.5 Customer agrees to provide at its own cost all necessary computer, telecommunications, modem or other equipment and facilities as may from time to time be recommended or required by SyncEzy for the purposes of using the Service.

### **5 Consultancy Services**

#### **5.1 Consultancy Services**

5.1.1 SyncEzy agrees to supply the consultancy services, if any, specified in the Estimate / Invoice and associated Statement of Work attached to this Agreement on the terms and conditions herein.

5.1.2 Consultancy Services shall refer to implementation consultancy, system design,

programming specification, programming services, software modification services, training and technical advice and guidance services.

5.1.3 All Services will be conducted in accordance with the agreed written specifications for the work.

5.1.4 All Services will be delivered in accordance with the timelines agreed in the Statement of Work.

5.1.5 Subject to otherwise complying with its obligations under this Agreement, SyncEzy shall exercise its independent discretion as to the most appropriate and effective manner of providing the Services and of satisfying the Customer's expectation of those Services.

5.1.6 SyncEzy shall supply and the Customer agrees to take the number of man days or hours at the prices specified in the Estimate / Invoice and Statement of Work attached to this Agreement and the Customer agrees to pay for the services on the terms specified. In the absence of any explicit terms the Consultancy Services shall be provided at SyncEzy's then current price list rate for such work, will be invoiced upon delivery of the Service and are payable in accordance with this Agreement.

5.1.7 Subject to compliance with security requirements and access restrictions imposed by the Customer, SyncEzy may provide its Services during such hours and on such days as it considers necessary and appropriate to ensure compliance with its obligations under this Agreement.

5.1.8 Customer shall provide such access to its facilities and work spaces for SyncEzy consultants to conduct these Services as agreed in the Statement of Work or other form of confirmation between the Parties.

5.1.9 SyncEzy does not warrant that it will be capable of attending the Customer's premises or of providing the Services at specific times requested by the Client during the term of this Agreement, except to the extent prescribed in the Statement of Work.

5.1.10 SyncEzy will use its reasonable endeavours to supply the service in the form of a named individual specified by the Customer if so desired but in any event shall not be liable for its failure to do so.

5.1.11 If the Customer schedules a date for the delivery of a Consultancy Service and then cancels the scheduled Consultancy Service less than 7 (seven) days prior to the delivery of

that service then SyncEzy shall be entitled to charge 50 (fifty) per centum of the rate for the Consultancy Service.

5.1.12 The rates for Consultancy Services at SyncEzy's premises includes all equipment and where appropriate the documentation necessary for any training service and for each attendee the cost of light refreshments. The rates do not include the costs of time, travel, accommodation and subsistence expenses for attendees of the Services.

5.1.13 All Consultancy Service rates exclude reasonable travel, accommodation and subsistence expenses, which will be invoiced separately.

5.1.14 The Customer has seven (7) days to complete their user acceptance testing for each deliverable. In the event the Customer fails to complete the user acceptance testing with the required period, SyncEzy reserves the right to invoice 90% of the amount due for that deliverable with the balance to be paid upon completion of testing by the Customer.

5.1.15 In the event of any variations to the original scope of works outlined in the Statement of Work, details of the variation, the date of the variation, and particulars regarding payment for the Variation shall be set out in writing and signed by both parties. A copy of the signed variation shall be given to the Customer as soon as it is reasonably practical and before the work to which the variation relates to is commenced.

5.1.16 SyncEzy reserves the right to modify any financial amounts contained within the Statement of Work in the event that the customer modifies the scope of works for this project or the customer provides more information at a date that is subsequent to the Statement of Work being presented by SyncEzy and signed by the client. In the event that the customer decides not to proceed with the revised Statement of Work, the client is liable for any and all work completed up to that point in the project.

5.1.17 The Customer hereby acknowledges that all property rights, intellectual, proprietary and other rights in and to any Software Product created as part of the supply of Consultancy Services belong to SyncEzy or its suppliers.

5.1.18 SyncEzy guarantees that all work will be of a professional standard that meets the Customer's expectation as a minimum. All

finished work will be approved in writing by the Customer before work is finalised.

5.1.19 8.2 SyncEzy provides a warranty period of 90 days for all finished work. This period will commence immediately after formal Customer sign off.

## **6 Support Services**

### **6.1 Scope of Service**

6.1.1 SyncEzy provides a support service (Support Service) following the expiry of the limited warranty period (90 days).

6.1.2 In all cases the Support Service is available for the current version and release of the Software Product only. The Customer may decide to retain use of the prior version of a Software Product but accepts that SyncEzy shall be obliged only to continue the services set out in this clause in respect of that prior version for a period of 12 months from the date of general release of a version or release of a Software Product which replaces that prior version.

6.1.3 SyncEzy may at its sole discretion continue to provide Support Service for prior versions or releases of any Software Product older than 12 months from the current release or version of that Software Product.

6.1.4 Unless specifically agreed and for the agreed fees, the Support Service does not cover third party Product, including the database, see 6.4 below for further information.

6.1.5 In consideration for the service charge for the Support Service or the charge for Hosted Service the Customer shall also be entitled to use the SyncEzy web support desk (Support@syncezy.com) during normal working hours and subject to the conditions set out in this Agreement and the current SyncEzy Support Policies and Procedures as set out in clause 8.

6.1.6 If the difficulty is determined to be an error in the Software Product concerned then SyncEzy shall correct or cause to be corrected the error. An error in a Software Product shall be defined as its failure to operate in accordance with its written specification or exceptionally such written specification as may be agreed between SyncEzy and the Customer from time to time.

6.1.7 If SyncEzy corrects or causes to be corrected an error in a Software Product then SyncEzy shall publish correction to the Hosted Service as soon as possible. Customer in

machine-readable form or access to SyncEzy website for Customer to download the Software Product together with instructions as to how the correction should be loaded or applied. If exceptionally or at the Customers request SyncEzy attends the Customer site or accesses the site remotely to load or apply the correction the time and travel costs associated with this attendance are not included in the service charge for Support Service and shall be separately chargeable to the Customer at SyncEzy's then current rates for such work.

6.1.8 SyncEzy reserves the right to correct or cause to be corrected an error in the new version or release of the Software Product to which the Customer shall be entitled to receive under clause 3.3.1 or 4.1.

6.1.9 Except where SyncEzy installs maintenance releases as part of Support Services or Hosted Services, the Customer undertakes to replace the current release of the Software Product with any maintenance release and, in any event, the Customer shall apply any fixes, patches or solutions supplied by SyncEzy forthwith upon receipt. If the Customer decides not to implement a maintenance release, fix, patch or solution provided by SyncEzy, then the Customer acknowledges that SyncEzy has no further obligation under Support Services or otherwise for failures corrected by the maintenance release, fix, patch or solution.

6.1.10 SyncEzy may at its discretion refer Customer requests to product suppliers for support.

6.1.11 SyncEzy shall be entitled to decline to respond to (and reserves the right to charge for the time reasonably spent dealing with) a Customer Support Request made by a member of the Customer's staff not properly trained in the use of the Software Product concerned.

6.1.12 SyncEzy shall not be liable to correct (and reserves the right to charge for time reasonably spent in the detection of) an error arising from the improper use, the improper operation, the unapproved modification or the neglect of any Software Product, or the failure to observe the operating instructions supplied with or in relation to any Software Product. This includes tables, reports or enhancements provided by SyncEzy.

6.1.13 SyncEzy may at its sole discretion use a modem or other electronic communication device to deliver support under this Agreement. The Customer agrees to assist

SyncEzy in this respect and shall act upon SyncEzy's reasonable instruction during the Customers normal working hours to enable support to be provided in this way.

## 6.2 Service Charges

6.2.1 The service charges for Support Service for the initial 12-month period of support shall be those set out in the Schedule or Estimate / Invoice attached to this Agreement.

6.2.2 Unless otherwise specified in the Estimate / Invoice, the service charge for Support Services will automatically be increased on each anniversary of the date of this Agreement by the same percentage as the increase in the Consumer Price Index for Sydney (published by the Australian Bureau of Statistics) for the preceding 12 month period, or 3 % - whichever is higher – to a maximum increase of 10% per annum.

6.2.3 The Support Service commences upon the expiry of the warranty period as stated in clause 3.4.1, on a 12 (twelve) monthly basis. The service will automatically renew on each anniversary of inception unless either party has given at least 60 (sixty) days written notice to terminate the Support Service prior to an anniversary or renewal date.

6.2.4 Customer is not allowed to partially renew their technical support services on some but not all Software Product licenses as set out in this Agreement.

6.2.5 Without prejudice to any right or remedy available to either party SyncEzy shall have the right to suspend or terminate the provision of Support Service if the Customer fails to make any payment due to SyncEzy under this Agreement.

## 6.3 Future Releases

6.3.1 In consideration for the service charge for Support Service the Customer shall be entitled to receive future releases of a Software Product. In general a future release of a Software Product will contain minor enhancements and error corrections to an earlier version of that Software Product and can be installed by the Customer with minimal disruption.

a) At its discretion, SyncEzy may make updates available to a specific customer or group of customers as a service update or minor release, or make a general release to all customers.

b) SyncEzy will normally provide updates to the Customer via its web site in the customer's integration portal.

6.3.2 In general a future version of a Software Product will contain major enhancements to the Software Product and will be made available to the customer as a part of the service agreement.

6.3.3 In the case of a future version and exceptionally in the case of a new release SyncEzy may recommend the use of one of its own staff in the planning, management and/or performance of the upgrade. Additional training of Customer staff may also be recommended. The costs of these additional services (recommended or not) are not included in the Support Service charge.

6.3.4 Customer Responsibilities for Updates:

- a) The Customer is responsible to judging the suitability of the new updates to their business processes
- b) The Customer acknowledges that, while SyncEzy will endeavour to release updates to the Software Product that ensure its ongoing compatibility with the Customer's Operating Environment, this will only be on a best endeavours basis and subject to SyncEzy sole determination of the commercial soundness of doing so,

6.3.5 Updates for Hosted Services shall be subject to the Estimate / Invoice and associated Statement of Work to specify the roles and responsibilities of SyncEzy, Charges for the service and other matters associated with the update.

## 6.4 Third Party Software Product

6.4.1 SyncEzy technical support does not provide technical support for third-party software, but it will, subject to payment of agreed fees, do its utmost to use its established skills in the enterprise application market to assist in the cases that Customer may have. Customer may, however, be requested to log the outstanding case with the relevant third party vendor. This will ultimately speed the resolution of the service request.

## 7 Force Majeure

7.1.1 SyncEzy is not liable for any failure to perform, or for any delay in performing any of

its obligations under this Agreement where the failure or delay is occasioned by:

- a) strike or other industrial action,
- b) any act or omission by you or any third party, including failures or delays by Other Suppliers,
- c) legislative or governmental prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licences or authorities,
- d) fire, flood, war, cable cut, natural disaster,
- e) any act nature,
- f) any other event beyond our reasonable control, or
- g) unscheduled maintenance to the SyncEzy network or facilities in the case of emergency to the extent that the emergency is not caused by SyncEzy's agents or contractors negligent or wilful acts or omissions.

7.1.2 In the event of catastrophic failures and conditions outside of the Service Provider's reasonable control (Force Majeure) the Service Provider will liaise with relevant 3rd party service providers Insurance Assessors & Loss Adjustors and emergency services to determine the most efficient course of action to restore service availability, and implement one of several alternative plans for such conditions.

## 8 Support policies and procedures

### 8.1 Introduction

8.1.1 Detailed below are the technical support policies and procedures for Support Services provided by SyncEzy. These are meant to ensure an effective and productive relationship with the Customer.

8.1.2 Support Services are governed by the terms and conditions of the SyncEzy General Terms and Conditions to which this Schedule is attached.

8.1.3 Support Services consist of providing answers to routine questions about the use of Software Product, technical issues with a Hosted Service and troubleshooting assistance by online support on [support@syncezy.com](mailto:support@syncezy.com).

8.1.4 Support Services do not include services which, in the usual course of SyncEzy's business, are provided to Customer as consulting services. Such consulting services



include, but are not limited to, custom application development and support, solution design, requirements analysis, report preparation, enhancements, upgrade assistance, training or data recreation. Nor does it cover inquiries on bookkeeping, general accounting or taxation issues, or consulting on business applications and best practices.

8.1.5 Any issues outside the scope outlined above, including but not limited to, hardware issues, network/connectivity issues, business/accounting advice, or any support required on software issues for which the Customer has received the appropriate training, are excluded from this Agreement. The determination of the nature of the Customer's query for these purposes will be made by SyncEzy's support consultants and, should they be out-of-scope may be provided on a pay per call basis.

8.1.6 Should the Customer fail to pay the support and maintenance fee by the renewal date, or cancel this support and maintenance agreement, at SyncEzy's discretion, the Customer may access SyncEzy technical support on a pay per call basis or acquire updates to the Software Product at a price determined by SyncEzy at its then prevailing Software Product prices and license fees.

## 8.2 Support Access

8.2.1 Technical support may be obtained by Customer's nominated contact person. Customer must designate one employee to serve as their primary contact person, they may nominate an alternate contact person. Customer may change their contact person so long as they provide notice to SyncEzy of such change.

## 8.3 Support Requests

8.3.1 Customer must report issues by logging on to the SyncEzy website:

<http://SyncEzy.com>

8.3.2 In the event of technical difficulties in accessing the online support site, calls may be logged with SyncEzy through the following:

E-mail: [Support@SyncEzy.com](mailto:Support@SyncEzy.com)

Hours 9 a.m. – 5:00 p.m. AEST, Monday through Friday on non-holidays

8.3.3 SyncEzy has a target of 24 hours to all tickets raised via this helpdesk system.

8.3.4 SyncEzy undertakes to use its reasonable endeavours to respond to the

Customer support request as soon as is reasonably practical and with due regard to the nature and effect of the difficulty.

8.3.5 The service desk will respond to a call in accordance with the Support Response Guidelines (clause 9) this is generally within two business hours for critical problems.

8.3.6 Additional and/or alternative support contact means and methods may be supplied on Service by Service basis, if and when it is appropriate.

## 8.4 Logging a Case

8.4.1 The following information is required to be supplied by the Customer when logging a support request:

- a) Contact Name,
- b) Company Name and Location,
- c) Software Product and Version,
- d) brief description of the case, including error messages as applicable Customer will submit sufficient information, which may include documentary evidence, for SyncEzy to understand and reproduce any Problem or error reported,
- e) steps taken to troubleshoot the case thus far,
- f) preferred contact method and contact information.

8.4.2 Upon logging a Case, the nominated contact will receive a case identification number for future reference.

## 8.5 Prioritisation of Cases

8.5.1 Our objective is to assign a prioritisation level as set out in clause 9 – Support Response Guidelines to all cases within one business day. These prioritisation levels are used to ensure that cases are resolved in a timely manner and allow us to provide the best support possible to each Customer. SyncEzy will work with the nominated contact to set the correct Severity Level of each case depending on technical and business needs.

8.5.2 Where possible, SyncEzy's support staff will attempt to solve an Incident, Service Request or Problem immediately or as soon as possible thereafter in alignment with the Service Response Guidelines clause 9 below. Where appropriate, SyncEzy will give an estimate of how long an Incident, Service

Request or a Problem may take to resolve and in any event will keep Customer informed of the progress of the resolution as outlined in the Service Response Guidelines below.

8.5.3 Incidents reported to the Service Desk may result in temporary solutions to make the Service available to the Users and/or the Customer as quickly as possible. A permanent fix for the Problem may then be implemented through scheduled or unscheduled system maintenance times as defined in the service hours of this agreement. All service availability and reliability targets during this period remain unchanged.

8.5.4 These target response and corrective action times are for any fault in the Service caused by the action or infrastructure of the Service Provider. The Service Provider will still endeavour to meet the target call response and fix times for issues caused by external parties and the Customer; however charges may be incurred as defined in the Charging section of this Agreement.

8.5.5 SyncEzy shall make commercially reasonable efforts to comply with the Support Response Guidelines (clause 9) when involved in problem resolution. Customer may log on to the online support site at any time to receive an update on Defect/Enhancement Requests.

8.5.6 SyncEzy reserves the right to:

a) make the final determination on the Severity Level of a case,

b) downgrade the severity of a case and notify the nominated contact of this action if the nominated contact fails to communicate with SyncEzy in a timely manner.

8.5.7 SyncEzy will revert the case to the original Severity Level if the case again becomes a severity for the nominated contact.

## **8.6 Pay Per Call Support**

8.6.1 SyncEzy may provide support not otherwise provided, as specialize consulting services for under the terms of this agreement on a pay per call basis.

8.6.2 Pay per call support will be provided according to the then current SyncEzy scale of fees, and only upon receipt of payment of the estimated fee advised to the Customer by the support consultant or provision of a credit card or other debit facility acceptable to SyncEzy.

## **8.7 Support Topic Limitations**

8.7.1 SyncEzy reserves the right to limit each telephone call to half an hour and to limit each call to one incident, which is defined as a single support issue or question.

8.7.2 SyncEzy may also limit or terminate Support Service to a customer who uses the service in an irregular, excessive, abusive or fraudulent manner.

## 9 Support Response Guidelines

### 9.1 SUPPORT AND ESCALATION

Severity	Initial Response Time	Effect	Target Resolution Time
1 (Critical)	2 business hours	<p>Defect prevents all useful work from being done.</p> <p>Material Defects in essential functions for which no non-manual workaround exists; or</p> <p>Defects that cause a material loss of data.</p> <p>High-risk security breach or Hosted Service disruption (SLA breach) – 24/7 rostered technician immediately attends, response within 2 business hours;</p>	<p>If a Severity 1 Defect occurs during normal operating hours (8:30 am – 5:30 pm AEST weekdays), SyncEzy will begin immediate and continuous efforts to reproduce and resolve the Defect, and will carry out those efforts until the Defect is resolved.</p> <p>SyncEzy will use reasonable efforts to resolve all Severity 1 Defects in the shortest time possible, and will review status with Customer on a daily basis or more frequently, if requested.</p>
2 (Major)	Next Business Day	<p>Defects that disable essential functions but for which a non-manual workaround exists,</p> <p>defects that block systems test or deliverables, or</p> <p>defects that violate the material specifications in the Documentation, or</p> <p>Service component malfunction or low-risk security breach.</p>	<p>If the Defect is a Severity 2 issue, SyncEzy will begin efforts to reproduce the problem no later than the opening of the next business day after receipt of the issue by Customer.</p> <p>SyncEzy will use reasonable efforts to resolve Severity 2 problems as rapidly as practical, but no later than the next Update after reproduction of the Defect.</p>
3 (Minor)	2 Business Days	All other issues.	<p>Severity 3 Defects will be addressed in Service Provider's normal Update. For Hosted Service the technician attends and reports by the end of the next working day.</p>
4 (Enhancement request)	N/A	<p>Functionality requested which is not available in standard operations of the software.</p> <p>Item will be considered for future releases.</p>	<p>Resolution is discussed and agreed to by both parties as to a reasonable timeframe for completion.</p>

## 10 Consultancy Services Processes and Procedures

### 10.1 Change management

Change Control is the primary vehicle for containing scope and ensuring that Customer and SyncEzy have the opportunity to make timely trade-offs between the three key project constraints of Scope, Budget, and Schedule. Potential changes are to be identified early, documented carefully, and resolved at the appropriate levels of responsibility.

Changes are broadly defined as work activities or work Product not originally planned for as defined by the Statement of Work. A change can reduce as well as increase the scope of effort. More specifically, changes will include:

- a) any scope items not listed in the Project plan,
- b) changes to referenced material, such as Requirements, will result in analysis to determine the impact on the Scope, Schedule, or Cost,
- c) participation in activities not previously included in list of work activities in the SoW or within the Project Plan,
- d) provision or development of deliverables not included in the SoW,
- e) a change in responsibilities, as defined in the SoW between SyncEzy and Customer, including reallocation of project staffing,
- f) any rework of completed activities or accepted deliverables due to reasons other than poor quality/inconsistency,
- g) investigative work to determine the impact of major changes,
- h) impact caused by a change in the assumptions, constraints, or dependencies defined in the Project Plan / Estimate,
- i) the impact of risk items, which are outside the ability of the project team to mitigate and which are defined through the Risk Management Process,
- j) delays or rework caused by items identified as Customer responsibilities in this Project Plan / Estimate

The Change Control Procedure is defined below to identify, document, assess, monitor, and approve or disapprove changes to the project scope or deliverables. SyncEzy and Customer will follow this process to classify, prioritise, and approve or reject changes.

All project Change Requests (CR) need to be clearly defined, including cost and schedule implications

Step	Process
Identify the change	Any project team member may identify a potential CR
Document the change	The CR must be in writing, along with an explanation of why the modification is desirable or necessary. Changes will be gathered in a dedicated document: the Change Log. The PM team will assign a priority and a need date for each change.
Assess the impact of the change	A member of the PM team will analyse the Scope, Schedule and Cost impact of the requested change. If the requested change is determined to be significant, the analysis will also be significant, and this analysis may also be treated as a CR.

Approve / disapprove the change	<p>The PM team can approve or disapprove the change or send it to the Steering Committee for a decision. Before SyncEzy takes any action, the CR must:</p> <ul style="list-style-type: none"> <li>• Be signed by both parties, and</li> <li>• Contain a description of any change to the services, service deliverables, schedule, resource allocation and availability, fees, expenses or other requirements of the work order</li> </ul>
Monitor and Report progress on the Change	<ul style="list-style-type: none"> <li>• All CR will be tracked in the Change Log and the project Status Reports</li> <li>• Critical changes will be escalated, reviewed and approved by the Project Steering Committee</li> </ul>
Communicate Change resolution	<ul style="list-style-type: none"> <li>• The Change Log and documented resolutions of changes will be made available to all team members</li> </ul>

Once a Change Order has been approved, the change is applied and the Project Scope, Schedule and Budget baselines are re-established.

## 10.2 Risk and issue management

### 10.2.1 Definition of Risk and Issue

- a) Risks are those conditions or exposures which may cause the implementation to not achieve its objectives as defined
- b) Issues are current problems that could impact the implementation if left unresolved. Issues may result in failure or delay in meeting milestones or deliverables.
- c) A risk may become an 'issue' if the risk event has occurred

### 10.2.2 Management Process and Escalation

SyncEzy's risk management strategy is based on early identification of issues coupled with risk assessment, analysis, and mitigation. Risk management is an iterative process that is initiated at the start of the project and continues throughout the project life cycle. Risks will be discussed in regular project status meetings and any changes noted in status reports.

### 10.2.3 Identification

Risks and issues are identified during a risk/issue workshop or through day-to-day project management. Risks/issues should be articulated in terms of 'What can/has happen(ed)', 'How can/did it happen', and 'consequences'.

### 10.2.4 Assessment

For Risks, assess the risks based on the severity of the risk impact and probability of the risk event occurring. The risk rating is a function of risk impact and risk probability. For Issues, however, the assessment is based on the impact of the issue to the project (as the problem has occurred, there is no need to assess probability).

### 10.2.5 Risk rating levels:

Risk rating is subjective to every project and will be identified in communication with the customer.

#### 10.2.6 Issue rating levels:

Open issues and clarifications required will be documented and presented to the customer

#### 10.2.7 Mitigation

The best course of action to minimise the chance or impact of the risk, and address/resolve the issue, is then identified and documented.

#### 10.2.8 Assign Owners & Dates

It is important to assign an owner to mitigating actions to address the risks/issues.

#### 10.2.9 Reflect in Schedule

As the mitigating actions are time-bound they must be reflected in the Master Schedule and tracked.

#### 10.2.10 Record in Register

Record risk/issue detail in the risk and issue registers respectively – it is the responsibility of the Project Manager to maintain the risk and issue registers, ensuring the status of the risks and issues are up-to-date.

#### 10.2.11 Closure

Once the Project Team are satisfied that a risk/issue has been satisfactorily addressed, the resolution method and date are recorded against the risk/issue, which can then be closed.

#### 10.2.12 Escalation

In an instance where an issue has not been resolved to the satisfaction of both parties at the project team level either party will escalate the issue to the Project Manager of the other party. If the parties are unable to agree:

- a) in respect to Project Changes,
- b) whether a deliverable has passed acceptance tests, or
- c) the cost of any services rendered by SyncEzy.

Then any unresolved issue will be escalated to the SyncEzy Account Manager and Customer Project Sponsor for a negotiated decision/settlement.