
MASTER SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT (“MSA”)

THIS MASTER SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT GOVERNS THE USE BY ANY PERSON OR ENTITY (“CUSTOMER”) OF THE SERVICES (AS DEFINED BELOW) PROVIDED BY SYNKKA LTD, INCORPORATED IN ENGLAND AND WALES WITH COMPANY NUMBER 16097527 (“SYNKKA” AND “SUPPLIER”). BY EXECUTING AN ORDER FORM (AS DEFINED BELOW) THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

THIS AGREEMENT, INCLUDING ANY ORDER FORMS ENTERED INTO BY THE PARTIES HEREUNDER, IS MADE EFFECTIVE ON THE DATE EXPRESSLY INDICATED IN THAT ORDER FORM AS BEING THE AGREEMENT’S EFFECTIVE DATE OR, IF THAT IS NOT EXPRESSLY PROVIDED, THE DATE ON WHICH THE INITIAL ORDER FORM IS EXECUTED BY BOTH SYNKKA AND CUSTOMER (THE “EFFECTIVE DATE”). CUSTOMER AND SYNKKA MAY BE REFERRED TO HEREIN INDIVIDUALLY AS A “PARTY” AND COLLECTIVELY AS THE “PARTIES”.

ATTENTION IS DRAWN TO CLAUSE 8 (WARRANTIES, DISCLAIMERS) IN PARTICULAR.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Background IP**” means all Intellectual Property Rights owned or possessed by a party or any of its Affiliates prior to or independent of performance of this Agreement and used by it in fulfilling its obligations under this Agreement, as well as any modifications or improvements made thereto in the course of performing this agreement which, for the avoidance of doubt, will not include the Foreground IP.

“**Business Day**” means a day, other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London or Stockholm, Sweden;

“**Business Hours**” means the business hours on a Business Day of 10:00 to 18:00 Central European Time, and “**Business Hour**” shall be construed accordingly;

“**Carrier**” means those carriers detailed within the Scope of Services section of the applicable Order Form.

“**Carrier Integration Costs**” has the meaning given to that term in the Fees Schedule of the applicable Order Form.

“**Charges**” means the Carrier Integration Costs, the Transactional Costs, and any expenses due and payable pursuant to clause 5.3 below, and any other charges or fees that do not form part of the Fees that are otherwise payable by the Customer for the supply of the Synkka Solution Services as detailed in the applicable Order Form.

“**Confidential Information**” shall have the meaning set forth in clause 7 below.

“**Customer Data**” shall mean all electronic data or information submitted by Customer to the Synkka Solution Services.

“**Data Protection Laws**” Data Protection Act 2018, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), EU Regulation 2016/679 (GDPR), and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

“**DPA**” has the meaning given to that term in the applicable Order Form.

“**Excused Downtime**” has the meaning given to that term in the SLA.

“**Fees**” means the charges or fees payable by the Customer for the supply of the Synkka Solution Services in accordance with clause 5 (*Fees and Payment*) and the Fees Schedule of the applicable Order Form.

“**Foreground IP**” means the Intellectual Property Rights in the Synkka Solution Services and any other Intellectual Property Rights developed in whole or in substantial part by or on behalf of a party during the Term of the Agreement and pursuant to the provision of the Services.

“**Goods**” means those underlying items that form part of a Shipment.

“**Implementation Start Date**” shall mean the date mutually agreed upon by the parties upon which date Synkka shall commence provision of Synkka Professional Services as detailed in the Order Details section of an applicable Order Form.

“**Implementation Term**” shall mean the estimated time from the Implementation Start Date to complete the Synkka Professional Services described in the Order Details section of an applicable Order Form. Implementation Term is an estimate of the time to complete the Synkka Professional Services and assumes that Customer’s availability, participation and cooperation have not delayed the Implementation Start Date or provision of the Synkka Professional Services by Synkka.

“**Insolvency Event**” shall mean in respect of either party:

- (a) other than for the purposes of a bona fide reconstruction or amalgamation, such party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved;
- (b) the appointment of an administrator of, or the making of an administration order in relation to, either party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity’s undertaking, assets, rights or revenue;
- (c) that party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) that party being unable to pay its debts, or being capable of being deemed unable to pay its debts,

within the meaning of section 123 of the Insolvency Act 1986; or

- (e) that party is subject to events or circumstances analogous to any of the foregoing in any applicable jurisdiction.

"Intellectual Property Rights" means any and all copyright, rights in inventions, patents, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, Source Code, semiconductor chip topography rights, the right to sue for passing off, utility models, domain names and all similar rights, any other rights of a similar nature and, in each case:

- (a) whether registered or not;
- (b) whether capable of protection by registration or not;
- (c) including any applications to protect or register such rights;
- (d) including all renewals and extensions of such rights or applications;
- (e) including rights to claim priority from such rights;
- (f) whether vested, contingent or future; and
- (g) wherever existing.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Non-Synkka Applications" means online applications and offline software products that are provided by entities or individuals other than Synkka and are clearly identified as such, and that interoperate with the Synkka Solution Services.

"Order Form" means the document for placing orders for Synkka Solution Services, including addenda and supplements thereto. The Order Form shall be deemed incorporated herein by reference.

"Personal data" shall have the meaning set out in the Data Protection Laws.

"Pound Sterling" and **"£"** mean the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"Scope of Services" means the scope of services as detailed within the Order Details section of the applicable Order Form.

"Services" shall mean the Synkka Solution Services and Synkka Professional Services collectively.

"Shipment" means any package excluding letters (and the Goods contained within it) that the Customer indicates to Synkka by triggering an 'API Call' is 'Subject to Delivery' by a Carrier, pursuant to the supply of the Services by Synkka to Customer.

"SLA" has the meaning given to that term in the applicable Order Form.

"Source Code" means any source code in human readable form together with all technical documents all in a form that is comprehensible and can be understood by a software developer for the purposes of developing and maintaining the software to which it relates.

"Subject to Delivery" means and refers to the stage where Synkka has completed its contractual obligations pursuant to this Agreement by commencing the process for the delivery of a Shipment by an applicable Carrier.

"Subscription Start Date" shall mean the date on which Synkka shall make the Synkka Solution Services available to Customer as set forth in the applicable Order Form.

"Subscription Term" shall mean the subscription period set forth on the applicable Order Form.

"Synkka Professional Services" shall mean any implementation, integration, consulting and similar services described in the Order Details section of the applicable Order Form.

"Synkka Solution Services" shall mean the products and services offered by Synkka (that are not Synkka Professional Services) that Customer orders on the applicable Order Form and Synkka makes available online via a password-protected customer login, including associated offline components.

"Term" shall have the meaning set forth in clause 11.1 below.

"Transactional Costs" has the meaning given to that term in the Fees Schedule of the applicable Order Form.

2. SYNKKA SOLUTION SERVICES

2.1. Provision of Synkka Solution Services.

Synkka shall make the Synkka Solution Services available to Customer pursuant to this Agreement and the Order Form(s) (including its Scope of Services) during each Subscription Term. Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Synkka regarding future functionality or features.

2.2. Subscriptions.

Unless otherwise specified in the applicable Order Form:

- (a) Synkka Solution Services are purchased as subscriptions and may be accessed only in accordance with the applicable Order Form(s);
- (b) Additional quantities may be added during the applicable Subscription Term on terms agreeable to both parties; and
- (c) The added quantities shall terminate on the same date as the pre-existing subscriptions.

2.3. Addenda for Additional Services.

If Customer desires to purchase certain one-to-one digital marketing solutions as part of the Synkka Solution Services, Customer acknowledges that certain aspects of such additional Synkka Solution Services will be provided by third parties and that Customer would be required to execute an addendum to this Agreement.

3. USE OF SYNKKA SOLUTION SERVICES

3.1. Synkka Obligations.

Synkka shall:

- (a) use its best endeavours not to use the name, Confidential Information, and/or intellectual property of the Customer to train publicly available artificial intelligence tools, unless explicitly agreed to by the parties in writing; and
- (b) use commercially reasonable efforts to make the Synkka Solution Services available in accordance with the service levels detailed within the SLA, except for Excused Downtime or any circumstance of force majeure as per clause 12.16 below.

3.2. Customer Obligations

1. Customer shall:

- (a) be responsible for the accuracy, quality and legality of Customer Data and of the means by which Customer acquires the Customer Data;
- (b) be responsible for the accuracy and quality of the Customer Data and means by which it is acquired; and
- (c) use the Synkka Solution Services in accordance with applicable laws and regulations.

2. Customer shall not:

- (a) make the Synkka Solution Services available to anyone other than its employees and contractors who are authorised by Customer to use the Synkka Solution Services;
- (b) sell, resell, rent, or lease the Synkka Solution Services;
- (c) use the Synkka Solution Services to store or transmit infringing or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights;
- (d) use the Synkka Solution Services to store or transmit Malicious Code;
- (e) attempt to gain unauthorised access to the Synkka Solution Services or their related systems or networks;
- (f) submit to the Synkka Solution Services or use the Synkka Solution Services to collect, store or process any personal identifiable information; or
- (g) otherwise interfere with or disrupt the integrity or performance of the Synkka Solution Services or third-party data contained therein,

Synkka shall be entitled (but not obliged) to verify at its own cost that Customer is in compliance with its responsibilities pursuant to this clause 3.2. In the event Customer breaches any provision of this clause 3.2, Synkka may, in addition to any other rights which Synkka may have under this Agreement or at law, temporarily suspend Customer's access to the Synkka Solution Services.

4. SYNKKA PROFESSIONAL SERVICES

4.1. Required Materials.

Subject to the provisions below and unless otherwise specified in the Order Details section of the applicable Order Form, Synkka shall supply all materials, equipment, and qualified personnel necessary to perform the Synkka Professional Services.

4.2. Relationship to the Synkka Solution Services.

The Synkka Professional Services may be in support of Customer's subscription to use the Synkka Solution Services pursuant to the applicable Order Form. Except as specifically set forth in the Order Details section of the applicable Order Form, Customer's purchase of Synkka Professional Services is not contingent upon the delivery of any future functionality or features in the Synkka Solution Services, nor is it dependent upon any oral or written public comments made by Synkka with respect to future functionality or features.

5. FEES AND PAYMENT

5.1. Service Fees.

Customer shall pay all Charges and Fees specified in all Order Forms executed hereunder. Except as otherwise specified in this Agreement or in a related Order Form, Charges and Fees are based on the Services purchased and not actual usage; payment obligations are non-cancellable; Charges and Fees paid are non-refundable; and the Services purchased cannot be decreased during the relevant Subscription Term.

5.2. Synkka Professional Services Charges.

(a) Fixed Price.

If the applicable Order Form provides for payment of Synkka Professional Services Charges on a "Fixed Price" basis, Synkka will invoice Customer for work performed as set forth in such Order Form. If Synkka is delayed in completing the Synkka Professional Services beyond the estimated Implementation Term of the applicable Order Form and such delay is due to Customer's unavailability, failure to cooperate, failure to provide information required by Synkka to provide the Synkka Professional Services, and/or provision of materially inaccurate or misleading information, Synkka shall notify Customer that its performance of the Synkka Professional Services may be delayed. In such cases Synkka's obligations may be reconsidered, the time to provide Synkka Professional Services may be extended, and Synkka may renegotiate the fixed Charges.

(b) Time & Materials.

If the applicable Order Form provides for payment of Synkka Professional Services Charges on a time and materials (or "**T&M**") basis, the Synkka Professional Services shall be provided at Synkka's T&M rates in effect as of the Implementation Start Date. On a T&M engagement, if an estimated total amount is stated in the applicable Order Form, that amount is solely a good faith estimate for Customer's budgeting and Synkka's resource scheduling purposes and not a guarantee that the Synkka Professional Services will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Synkka will continue to provide Synkka Professional Services on a T&M basis under the same rates and terms.

5.3. Transactional Costs; Expenses.

Customer shall within 30 days of the date reimburse Synkka for: (i) any Transactional Costs; and (ii) where agreed between the parties in advance, reasonable travel and out-of-pocket expenses incurred by Synkka in conjunction with the provision of the Services.

5.4. Invoicing and Payment.

In relation to any Subscription Term, Synkka shall invoice Customer for the Charges and Fees and on the terms detailed in the applicable Order Form. In relation to any renewal Subscription Term(s) as set forth in clause 11.2 below, Synkka will invoice Customer in advance and in accordance with the applicable Order Form, unless specified otherwise therein. Unless otherwise stated in the Order Form: (i) invoiced Fees are due net 7 days from the invoice date; and (ii) invoiced Charges are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Synkka and notifying Synkka of any changes to such information.

5.5. Overdue Charges.

If any Charges, Fees or other amounts invoiced are not received by Synkka by the due date, then, without limiting Synkka's rights or remedies,

(a) such Charges, Fees and other amounts may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by the Late Payment of Commercial Debts (Interest) Act 1998, whichever is lower, and/or

(b) Synkka may condition future subscription renewals and Order Forms on payment terms shorter than those specified in clause 5.4 above.

5.6. Suspension of Synkka Solution Services and Acceleration.

If any amount owing by Customer under this or any other agreement for the Services is 30 days or more overdue, Synkka may, without limiting Synkka's other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend provision of the Services to Customer until such amounts are paid in full. Synkka will give Customer at least 7 days' prior notice that Customer's account is overdue, in accordance with clause 12.1 below, before suspending Services to Customer.

5.7. Payment Disputes.

Synkka shall not exercise Synkka's rights under clause 5.5 or clause 5.6 if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute; provided, however, Customer shall not be entitled to offset its own claims against any claim of Synkka under this agreement (or to claim any right of retention) unless Customer's counter-claim is:

- (a) undisputed by Synkka, or
- (b) confirmed by a binding court decision that cannot be appealed.

5.8. Currency; Bank Transfers.

Any fees specified in Order Forms shall be payable to Synkka in Pound Sterling to the below account details, unless otherwise agreed by the parties in writing:

(a) Local UK Payments

Account Name: Synkka Ltd

Sort Code: 04-29-09

Account Number: 73096822

(b) International Payments (Global SWIFT)

Account Name: Synkka Ltd

IBAN: GB72 REVO 0099 6905 3083 50

BIC: REVOGB21

Without prejudice to the provisions of clause 5.9 below, any bank transfer charges are to be borne by the Customer and are not to be deducted from the Charges and Fees otherwise due and payable to Customer.

5.9. Taxes.

Unless otherwise stated, Synkka's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction including, without limitation, value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Synkka has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Synkka with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, Synkka is solely responsible for taxes assessable against Synkka based on Synkka's income, property and employees.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights.

Subject to the limited rights expressly granted hereunder: (i) each party reserves all of its own Background IP and related Intellectual Property Rights, Confidential Information and any other data; and (ii) Synkka reserves all rights, title and interest in and to the Synkka Solution Services, including all related Intellectual Property Rights and any other Foreground IP. No rights are granted hereunder other than as expressly set forth herein.

6.2. Background IP.

To the extent necessary to allow another party to perform its obligations under this Agreement in accordance with the provision of Services, each party hereby grants to the other party a limited, exclusive, royalty-free non-transferable, and non-sublicensable licence to use such Background IP as required until termination or expiry of the Agreement for the sole purpose of enabling that other party to perform its obligations under the Agreement.

6.3. Synkka Solution Services.

Without prejudice to the remaining provisions of this clause 6 (*Proprietary Rights*), Synkka grants to the Customer a non-exclusive, non-transferable and worldwide right to use the Synkka Solution Services and (where agreed) any other Foreground IP solely for the Customer's internal business operations in its capacity as a commercial business.

6.4. Restrictions.

Customer shall not:

- (a) modify, copy, or create derivative works based on the Synkka Solution Services;
- (b) frame or mirror any content forming part of the Synkka Solution Services, other than on Customer's own intranets or otherwise for its own internal business purposes;
- (c) reverse engineer the Synkka Solution Services; or
- (d) access the Synkka Solution Services in order to
 - (i) build a competitive product or service, or
 - (ii) copy any ideas, features, functions or graphics of the Synkka Solution Services.

6.5. Customer Data.

As between Customer and Synkka, Customer shall own all Customer Data, including all reports, statistics, and other data to the extent generated solely from Customer Data, and all intellectual property rights therein; provided that Synkka may as the Customer's processor and as hereby instructed by Customer anonymise Customer Data in order to use the so anonymised data for the purposes of developing and improving the Synkka Solution Services and other products and services of Synkka and its Affiliates, in accordance with applicable Data Protection Laws.

6.6. Improvements.

Synkka shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the Synkka Solution Services or any new programs, upgrades, modifications or enhancements developed by Synkka in connection with rendering the Synkka Solution Services to Customer, even when refinements and improvements result from Customer's request or suggestion. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in Synkka by virtue of this Agreement or otherwise, Customer hereby transfers and assigns (and, if applicable, shall cause its Affiliates to transfer and assign) to Synkka all rights, title, and interest which Customer or its Affiliates may have in or to such refinements and improvements.

6.7. Synkka Professional Services Deliverables.

Where Synkka Professional Services are provided by Synkka to Customer, Synkka hereby grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to use for its internal business purposes anything developed by Synkka for Customer and detailed within the Order Details section of the

applicable Order Form ("**Deliverables**"). Synkka shall retain all ownership rights to the Deliverables.

6.8. Publicity; Trademarks.

Neither party may issue press releases or any other public announcement of any kind relating to this Agreement without the other party's prior written consent (email is sufficient). Notwithstanding the foregoing, during the Term, either party may include the name and logo of the other party in lists (including on its website) of customers or vendors in accordance with the other party's standard logo and/or trademark usage guidelines. In addition, Synkka may use the trademarks and trade names of Customer solely in connection with its authorised provision of the Services. Except as set forth herein, neither party may use the trademarks and trade names of the other party without the prior written consent of the other party.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information.

As used herein, "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information shall include Customer Data; Synkka Confidential Information shall include the Synkka Solution Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that:

- (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
- (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
- (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or
- (d) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information.

The Receiving Party shall:

- (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care),
- (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and
- (c) except as otherwise authorised by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

7.3. Compelled Disclosure.

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the

Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.4. Remedies.

If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

8. WARRANTIES; DISCLAIMERS

8.1.Representations.

Each party represents that it has validly entered into this Agreement and has the legal power to do so; that the signatory of the Order Form that references this Agreement has the authority to bind the applicable organisation; and this Agreement constitutes the legal, valid, and binding obligation of each party, enforceable in accordance with its terms.

8.2.Synkka Warranties.

(a) Synkka Solution Services.

Synkka warrants that:

- (i) the Synkka Solution Services shall perform as outlined in the Order Form;
- (ii) the functionality of the Synkka Solution Services will not be materially decreased during a Subscription Term; and
- (iii) Synkka will not transmit Malicious Code to Customer, provided Synkka is not in breach of this subpart (iii) if Customer uploads a file containing Malicious Code into the Synkka Solution Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Customer's exclusive remedy shall be as provided in clause 11.4 and clause 11.5 below.

(b) Synkka Professional Services.

Synkka warrants that the Synkka Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. Customer must report any deficiencies in the Synkka Professional Services to Synkka in writing within 90 days of performance of such Synkka Professional Services in order to receive warranty remedies. For any breach of the warranty in this clause 8.2(b), Customer's exclusive remedy, and Synkka's entire liability, shall be the re-performance of the Synkka Professional Services; if Synkka is unable to re-perform the Synkka Professional Services as warranted within 30 days of receipt of notice of breach, Customer shall be entitled to recover the fees paid to Synkka for the deficient Synkka Professional Services.

8.3.Customer Warranties.

Customer represents and warrants that:

- (i) the Customer Data shall not infringe on any copyright, patent, trade secret or other proprietary right held by any third party; and
- (ii) Customer shall not use the Synkka Solution Services in a manner that violates any international, federal, state, or local law or regulation relating to individual privacy or the distribution of email and other one-to-one digital messages.

8.4.Disclaimer.

Except as expressly provided herein, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of satisfactory quality, merchantability or fitness for a particular purpose, including those implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 to the maximum extent permitted by applicable law. Synkka Solution Services provided under a free trial at no charge are

provided "as is", exclusive of any warranty or availability commitment whatsoever. Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.

8.5.Risk in Shipments.

In the event that the Customer triggers the processing of a Shipment as part of the provision of the Synkka Solution Services, risk in the Shipment and any underlying Goods shall remain with the Customer (or their own customer or client, as applicable) ("**Shipment Deliverer**"), pass to the relevant Carrier, or pass to the recipient of the relevant Shipment ("**Shipment Receiver**") (as applicable) in accordance with such terms as agreed between the Shipment Deliverer and the Shipment Receiver and/or in accordance with applicable law, and will not under any circumstances pass to Synkka.

8.6.Beta Services.

From time to time, Synkka may invite Customer to try, at no charge, Synkka products or services that are not generally available to Synkka customers ("**Beta Services**"). Customer may accept or decline any such trial in Customer's sole discretion. Any Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, or by a description of similar import. Beta Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, are subject to change in Synkka's sole discretion, and may be subject to additional terms. Customer shall immediately inform Synkka of any bugs or errors experienced, and otherwise provide its feedback to, and cooperate with, Synkka on Beta Services as reasonably requested by Synkka. BETA SERVICES ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY, AND SYNKKA DISCLAIMS ANY AND ALL LIABILITY FOR BETA SERVICES, EXCEPT IN THE CASES OF CLAUSE 10.3. Synkka may discontinue Beta Services at any time in Synkka's sole discretion, and may never make them generally available.

9. INDEMNIFICATION

9.1.Indemnification by Synkka.

Synkka shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Synkka Solution Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, legal fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court approved settlement of, a Claim Against Customer; provided that Customer:

- (a) promptly gives Synkka written notice of the Claim Against Customer;
- (b) gives Synkka sole control of the defense and settlement of the Claim Against Customer (provided that Synkka may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and
- (c) provides to Synkka all reasonable assistance, at Synkka's expense. If Synkka receives information regarding an infringement, misappropriation or other claim, Synkka may in Synkka's discretion, and at no cost to Customer,
 - (i) modify the Synkka Solution Services, so that they no longer infringe, misappropriate, or give rise to any other claim, without breaching Synkka's warranties under [clause 8.2](#) above,
 - (ii) obtain a license for Customer's continued use of the subject Synkka Solution Services in accordance with this Agreement,
 - (iii) terminate Customer's subscriptions for such Synkka Solution Services upon 30 days' written notice and refund to Customer any prepaid fees covering the remainder of the term of the terminated subscriptions, or
 - (iv) require Customer to immediately, upon receipt of notice from Synkka, discontinue all use of any

Customer Data that may be related to an actual or potential infringement, misappropriation or other claim, to the extent not prohibited by law, or delete or permit Synkka to delete from the Synkka Solution Services, any Customer Data, in each case within five days of receipt of notice from Synkka. Customer shall, if so requested by Synkka, certify such deletion and discontinuance of use in writing. Synkka shall be authorised to provide a copy of such certification to the third party claimant. Synkka shall have no obligation to indemnify Customer to the extent any Claim Against Customer arises from a Non-Synkka Application, Customer's breach of the terms of this Agreement, or actions of a third party hosting provider.

9.2.Indemnification by Customer.

Customer shall defend Synkka against any claim, demand, suit or proceeding made or brought against Synkka by a third party alleging that Customer Data, or Customer's use of the Synkka Solution Services or a Non-Synkka Application in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "**Claim Against Synkka**"), and shall indemnify Synkka for any damages, legal fees and costs finally awarded against Synkka as a result of, or for any amounts paid by Synkka under a court-approved settlement of, a Claim Against Synkka; provided that Synkka:

- (a) promptly gives Customer written notice of the Claim Against Synkka;
- (b) gives Customer sole control of the defence and settlement of the Claim Against Synkka (provided that Customer may not settle any Claim Against Synkka unless the settlement unconditionally releases Synkka of all liability); and
- (c) provide to Customer all reasonable assistance, at Customer's expense. In the event Synkka receives information regarding an actual or potential Claim Against Synkka, Synkka may, in Synkka's discretion, require Customer to immediately, upon receipt of notice from Synkka, discontinue all use of any Customer Data that may be related to an actual or potential Claim Against Synkka and, to the extent not prohibited by law, delete or permit Synkka to delete from the Synkka Solution Services, any Customer Data, in each case within five days of receipt of notice from Synkka. Customer shall, if so requested by Synkka, certify such deletion and discontinuance of use in writing. Synkka shall be authorised to provide a copy of such certification to the third party claimant.

9.3.Exclusive Remedy.

This clause 9 (*Indemnification*) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this clause 9 (*Indemnification*).

10. LIMITATION OF LIABILITY.

10.1.Limitation of Liability.

NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER CLAUSE 5 (*FEES AND PAYMENT*) ABOVE.

10.2.Exclusion of Consequential and Related Damages.

SUBJECT ALWAYS TO [CLAUSE 10.3](#), IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL,

INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10.3. Nothing in this Agreement shall limit or exclude either party's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud; or
- (c) any other liability that cannot by law be limited or excluded.

10.4. The parties agree that the limitations set out in this clause 10 (Limitation of Liability) and the restrictions in this Agreement are reasonable because:

- (a) Synkka cannot control how and for what purpose Customer uses the Synkka Solution Services; and,
- (b) the Synkka Solution Services have not been developed specifically for Customer.

11. TERM AND TERMINATION

11.1. Term of Agreement.

This Agreement commences on the Effective Date and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated (the "Term").

11.2. Term of Subscriptions.

Subscriptions to the Synkka Solution Services commence on the Subscription Start Date specified in the applicable Order Form and continue for the Subscription Term specified therein. Except as otherwise specified in the applicable Order Form, all subscriptions shall automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant Subscription Term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless Synkka have given Customer written notice of a pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 5% of the pricing for the relevant Synkka Solution Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

11.3. Implementation Term of Synkka Professional Services.

Synkka Professional Services shall commence on the Implementation Start Date and shall continue until such Synkka Professional Services are completed.

11.4. Termination for Cause.

A party may terminate this Agreement for cause:

- (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or
- (ii) if the other party suffers an Insolvency Event.

11.5. Refund or Payment upon Termination.

Upon any termination for cause by Customer, Synkka shall refund Customer any prepaid fees covering the remainder of the Term after the effective date of termination. Upon any termination for cause by Synkka, Customer shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Synkka for the period prior to the effective date of termination.

11.6. Surviving Provisions.

clause 5 (*Fees and Payment*), clause 6 (*Proprietary Rights*), clause 7 (*Confidentiality*), clause 8 (*Warranties; Disclaimers*), clause 9 (*Indemnification*), clause 10 (*Limitation of Liability*), clause 11.5

(*Refund or Payment upon Termination*), this clause 11.6 (*Surviving Provisions*), and clause 12 (*Miscellaneous*) shall survive any termination or expiration of this Agreement.

12. MISCELLANEOUS

12.1. Notice.

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon:

- a) personal delivery;
- b) the second Business day after mailing;
- c) the second Business day after sending by confirmed facsimile; or
- d) except for notices of termination or an indemnifiable claim ("**Legal Notices**"), the first Business day after sending by email.

Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer, and Legal Notices to Customer shall be addressed to Customer and be clearly identified as Legal Notices. All other notices to Customer shall be addressed to the relevant administrator designated by Customer.

12.2. Relationship of the Parties.

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

12.3. Agreement to Governing Law and Jurisdiction.

This Agreement shall be exclusively governed by and construed in accordance with the laws of England and Wales. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the competent courts in London, England.

12.4. Further Assurance.

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

12.5. Insurance.

Each party agrees to maintain appropriate insurance cover with a reputable insurance company against all of their relevant liabilities that may arise under this Agreement pursuant to the provision of the Services by Synkka to the Customer.

12.6. Export Compliance.

The Synkka Solution Services, other technology Synkka makes available, and derivatives thereof may be subject to export control and trade sanctions laws and regulations of the European Union, the United States and other jurisdictions ("**Export Control Laws**"). Each party shall comply with Export Control Laws. Customer, its Affiliates, and users shall not access, permit access to or use the Synkka Solution Services in or from any embargoed country or region.

12.7. Anti-Corruption.

The Parties shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) promptly report to Synkka any request or demand for any undue financial or other advantage of any kind received by Customer in connection with the performance of this agreement.

The undertakings specified in clause 12.7.1 constitute minimum and not maximum standards for each party. Where the provisions of law or the requirements of such undertakings address the same matters, the party shall apply the provision or fulfil the undertaking that affords the greater protection.

Breach of this clause 12.7 shall be deemed a material breach under clause 11.4.

12.8.No Third-Party Beneficiaries.

A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

12.9.Waiver.

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

12.10.Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.11.Legal Fees.

Customer shall pay on demand all of Synkka's reasonable legal fees and other costs incurred by Synkka to collect any fees or charges due to Synkka under this Agreement.

12.12.Subcontractors.

Synkka may use subcontractors to perform the Services if:

- (a) Customer agrees thereto in advance, or
- (b) Synkka executes a written agreement with such subcontractor that obligates such subcontractor to protect Customer and Customer Data to the same extent as is required of Synkka hereunder. Upon request, Synkka shall disclose such subcontractors to Customer.

Synkka shall be responsible for all acts and omissions of any such subcontractor to the same extent as if Synkka had performed the Services.

12.13.Assignment.

Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Synkka (not to be unreasonably withheld). Notwithstanding the foregoing, Customer may assign this Agreement in its entirety (including all Order Forms), without consent of Synkka, to its Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets not involving a direct competitor of Synkka. If Customer assigns any of its rights or obligations hereunder in violation of the foregoing terms and such assignment is valid by operation of law, Customer shall compensate Synkka for any losses, damages, expenses, or other costs arising from such assignment, and Synkka may fulfil its obligations with full discharging effect to either Customer or its assignee, as determined by Synkka in its sole discretion. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

12.14.Interpretation.

A reference to a statute, statutory provision or any subordinated legislation made under a statute is a reference to such statute, provision or subordinated legislation as amended or re-enacted from time to time, whether before or after the date of this agreement and in the case of a reference to a statute is also to all subordinate legislation made under that statute whether before or after the date of this agreement provided that, as between the parties, no such amendment or e-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

12.15.Entire Agreement.

This Agreement is the entire agreement between Customer and Synkka regarding Customer's use of the Synkka Solution Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment, or waiver is to be asserted. The parties agree that any term or condition stated in Customer's purchase order or in any other of Customer's other documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of such Order Form shall prevail.

12.16.Force Majeure.

Synkka shall not be held responsible for any delay, limitation or unavailability of services caused by circumstances beyond Synkka's reasonable control, including, without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Synkka employees), failures, downtime or delays by an Internet service provider, hosting provider, or third-party social platform, or denial of service attacks.

12.17.Written form.

Where this Agreement provides that statements of a party must be made in writing it is sufficient to transmit a scanned copy of the statement as a personally signed paper document by fax or email attachment (but not the transmission of the statement as a mere email text), or to digitally sign the statement using the system of the service provider DocuSign (www.docusign.com) or similar. In such case either party can subsequently demand that the statement is documented in a personally signed paper document