

Professional Services Terms and Conditions

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

1. Services.

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

2. Payment of Invoices.

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

3. Term.

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

4. License.

- a. Synamedia grants to Customer a non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of the Services, if any, solely in object code form; (ii) other Deliverables specified in the SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the “Licensed Materials”). In addition, Synamedia grants to Customer a right to modify and create derivative works of any Scripts provided by Synamedia to Customer pursuant to this Agreement, solely for Customer's internal business use. These license grants do not include the right to sublicense. Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's direct benefit, provided that any such use is subject to license restrictions and confidentiality obligations at least as protective of Synamedia's rights in such Licensed Materials as are specified in these Terms.
- b. Nothing in these Terms or the SOW alters or affects the Intellectual Property rights and/or licenses provided with any Synamedia Products. The terms and conditions provided with the Software, or in the absence of such terms the license posted at <https://www.synamedia.com/vividtec-end-user-license-agreement/> (“End User License Agreement”), are hereby incorporated into this agreement by this reference. To the extent there is a conflict between the terms of the End User License Agreement and these Terms, the terms of the End User License Agreement will apply, unless explicitly stated otherwise in these Terms. The provisions in this Section apply only to those Services, Deliverables and other Intellectual Property provided by Synamedia to Customer pursuant to the SOW.
- c. Except as otherwise provided herein, Customer will use Software solely on Synamedia Hardware. Customer may also use Application Software on third party hardware and as expressly authorized in the Software Documentation. In the case of Data Collection Tools that include Hardware, Customer may only use the Software included with such Data Collection Tools solely on the Hardware provided with such Data Collection Tools. In the case of Data Collection Tools

that consist of Software only, Customer may use such Data Collection Tools on Hardware or third-party hardware, unless otherwise set forth in the SOW.

- d. The license rights granted in this Section are perpetual, provided Customer is not in breach of these Terms or the SOW. Notwithstanding the above, the license for Data Collection Tools will terminate upon the earlier of: (i) the expiration or termination of the Services pursuant to which the Data Collection Tools were provided; or (ii) Synamedia's request to Customer that the Data Collection Tool(s) be returned to Synamedia.
- e. Except as otherwise expressly set forth in these Terms or the SOW, Customer shall not (and shall not permit a third party to): (i) download more than one copy of the Software; (ii) copy, in whole or in part, any Software, Deliverable or Data Collection Tool; (iii) make error corrections or derivative works of, or otherwise modify, decompile, decrypt, reverse engineer, disassemble or reduce all or any portion of any Software, Deliverable or Data Collection Tool to human-readable form; or (iv) transfer, sublicense, rent, lease, distribute, or sell any Software, Deliverables or Data Collection Tools. Customer acknowledges that it does not receive any implied licenses under these Terms, and all rights not expressly granted herein are reserved to Synamedia.
- f. When Customer updates or upgrades a copy of Software to a new release, Customer shall not thereafter use concurrently, except for a limited period of parallel testing, that new release and any previous release of the Software. Customer shall not re-use, host or have hosted for later re-use, or transfer any previous release of the Software to any other device(s).
- g. Customer grants to Synamedia a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate into any or all Services, Products, Deliverables, Data Collection Tools, Reports, Scripts and Synamedia Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute, and create derivative works of such Intellectual Property for any and all purposes whatsoever, and Customer acknowledges that it will have no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Synamedia Preexisting Technology as a result of Synamedia's use of any such Intellectual Property. For purposes of these Terms, "Customer Feedback" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Synamedia Pre-Existing Technology that Customer provides to Synamedia.

5. Ownership.

- a. Each party will retain the exclusive ownership of all of its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of these Terms ("Pre-Existing Technology").
- b. Except as otherwise expressly set forth in these Terms or the SOW, Synamedia owns and will continue to own all right, title, and interest in and to the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Synamedia (or a third party acting on Synamedia's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively "Synamedia Intellectual Property").
- c. As between Customer and Synamedia, Customer at all times retains all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than Synamedia Intellectual Property. Third Party Products will at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

6. Warranty.

- a. ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, SYNAMEDIA HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION: (I) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT OR ACCURACY, OR (II) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY.
- b. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE

REMEDY FOR BREACH OF WARRANTY SHALL BE, AT SYNAMEDIA'S OPTION, RE-PERFORMANCE OF THE SERVICES; OR TERMINATION OF THE SOW AND RETURN OF THE PORTION OF THE SERVICE FEES PAID TO SYNAMEDIA BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

7. Limitation of Liability and Consequential Damages Waiver.

- a. TO THE EXTENT REQUIRED UNDER LOCAL LAW, NOTHING IN THIS AGREEMENT SHALL LIMIT: (I) SYNAMEDIA'S, ITS AFFILIATES', OFFICERS', DIRECTORS', EMPLOYEES', AGENTS' AND SUPPLIERS' COLLECTIVE LIABILITY TO CUSTOMER FOR BODILY INJURY OR DEATH CAUSED BY THEIR NEGLIGENCE, OR (II) SYNAMEDIA'S LIABILITY FOR FRAUDULENT MISREPRESENTATION OR IN THE TORT OF DECEIT.
- b. ALL LIABILITY OF SYNAMEDIA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THE SOW OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE MONEY PAID TO SYNAMEDIA UNDER THE SOW DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PERINCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).
- c. SUBJECT TO THE EXCEPTIONS SET OUT IN SECTION 7(a), OR CUSTOMER'S BREACH OF SECTION 4, IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, LOST BUSINESS OPPORTUNITY, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.
- d. TO THE EXTENT ALLOWED UNDER LOCAL LAW, SYNAMEDIA AND CUSTOMER AGREE THAT THE FOREGOING SECTIONS 8 AND 9 FAIRLY ALLOCATE THE RISKS IN THIS AGREEMENT BETWEEN THE PARTIES. SYNAMEDIA AND CUSTOMER FURTHER AGREE THAT THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THE LIMITATIONS SPECIFIED IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THE SOW OR ANY LIMITED REMEDY HEREUNDER.

8. Document Review and Approval Process.

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

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

9. Change Management Procedures.

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

- a) Changes to the scope of Services and/or specifications for the Services,
- b) Changes to the Milestone Invoice Schedule (MIS),

- c) Changes to the project schedule,
- d) Unavailability of resources which are beyond either party's control, and/or,
- e) Environmental or architectural conditions not previously identified.

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

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

10. Confidentiality.

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

11. Cooperation.

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

12. Non-Exclusivity.

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

13. Waiver of Jury Trial.

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

14. Other Terms.

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

To Synamedia:

Synamedia Limited
Attn: General Counsel
51 Clivemont Road
Maidenhead, England, SL6 7BZ

To Customer:

The address set forth in the applicable SOW.

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

- e) Binding Nature; Assignment and Subcontracting. These Terms, including an applicable SOW shall be binding on the respective parties thereto and their respective permitted successors and assigns; provided, however, that, except as provided below, neither Synamedia nor Customer may assign any of its rights or obligations (including interests or claims) relating to a SOW or the Services without the prior written consent of the other. Customer hereby consents to Synamedia assigning or subcontracting any portion of the Services to any affiliate or related entity, whether located within or outside the United States. Services performed under an applicable SOW by Synamedia's subcontractors shall be invoiced as professional fees on the same basis as Services performed by Synamedia's personnel, unless otherwise agreed.
- f) Waivers and Amendments. No delay or omission by Synamedia or Customer in enforcing its rights or remedies under these Terms or an applicable SOW shall impair such right or remedy or be deemed to be a waiver thereof. No waiver of any right or remedy under these Terms or the applicable SOW with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion. No amendment or waiver of these Terms or the SOW shall be valid unless in writing and signed by the parties thereto.

- g) Entire Agreement. These Terms, together with its attachments and the SOW, constitutes the entire agreement with respect to the subject matter hereof and supersedes all other oral or written representations, understandings or agreements relating to the subject matter hereof. No additional terms on a purchase order shall be binding upon Synamedia and are deemed rejected.
- h) Governing Law; Jurisdiction and Venue. These Terms and all matters relating to these Terms, a SOW or the Services shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to the choice of law principles thereof). Any action based on or arising out of these Terms, the SOW or the Services shall be brought and maintained exclusively in any state or federal court, in each case located in New York County, the State of New York. Each of the parties hereby expressly and irrevocably submits to the jurisdiction of such courts for the purposes of any such action and expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action brought in any such court and any claim that any such action has been brought in an inconvenient forum.
- i) Severability. If any provision of these Terms or the SOW is found unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in these Terms.
- j) Attorneys' Fees. To the extent allowed under local law, in any suit or proceeding relating to the SOW, the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of the SOW, and shall survive expiration or termination and shall not be merged into any such judgment.

[Glossary of terms to follow]

APPENDIX A GLOSSARY OF TERMS

Affiliate with respect to a party, means any corporation, firm, partnership, limited liability company or other entity, whether *de jure* or *de facto*, that directly or indirectly owns, is owned by, or is under common ownership with such party to the extent of at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of such party, and any person, firm, partnership, corporation, limited liability company or other entity actually controlled by, controlling, or under common control with such party.

Application Software means non-resident or standalone Software Products listed on the Price List.

Confidential Information means proprietary and confidential information received by Synamedia or Customer in connection with the SOW and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Synamedia, any information posted on Synamedia.com.

Data Collection Tools means Hardware and/or Software tools that support Synamedia's ability to provide troubleshooting on cases, data analysis, and report generation capabilities as part of the Services.

Intellectual Property means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

Price List means the price list for services applicable in the country where the Services are ordered or delivered.

Third Party Products means third party hardware and/or software, and all upgrades/updates thereto, that are designated by Synamedia as required for:

- (i) The operation of Application Software in conformance with Synamedia applicable Application Software Documentation; and
- (ii) Synamedia support of the Application Software.