

**DATED XXX 2014**

**(1) SYNAPSE UK LIMITED**

**(2) XXX**

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**AGREEMENT FOR PROVISION OF THE  
CLOUDESKTOP  
VIRTUAL DESKTOP SERVICE**

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**THIS AGREEMENT** is dated XXX 2014

**BETWEEN:**

- (1) SYNAPSE UK LIMITED, a company incorporated in England and Wales under registration no. 3494151, whose registered office is at Communications House, 26 York Street, London W1U 6PZ (**'SYNAPSE'**); and
- (2) XXX, a company incorporated in England and Wales under registration no., whose registered office is at (**'Client'**).

**WHEREAS:**

- (A) SYNAPSE provides a web-based computer service called CLOUDESHTOP (defined below as the **'Service'**).
- (B) This Agreement concerns the supply by SYNAPSE to, and use by the Client of, the Service.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

1.1 In this Agreement:

**'Business Day'** means any day other than Saturday, Sunday or a public holiday in the Territory;

**'Client Data'** means the proprietary data supplied by the Client pursuant to the provision of the Service;

**'DPA'** means the Data Protection Act 1998, all regulations under that Act and any codes of practice and guidance issued by the Information Commissioner;

**'Effective Date'** means the date on which this Agreement comes into force;

**'End-User'** means an individual authorised by the Client to use the Service;

**'Force Majeure'** means any circumstances beyond the reasonable control of the relevant party, including any act of God, war, riot, civil commotion, fire, explosion, flood, adverse weather, epidemic or other natural physical disaster, strike, lock out, or other form of industrial action, or any form of Government or supra-national authority intervention;

**'Hosting Service'** means the services that SYNAPSE provides to allow End-Users to access and use the Service, including hosting set-up and ongoing services, as described in Schedule 1;

**'Information'** means any information, data or materials supplied through the Service other than any Client Data;

**'Intellectual Property Rights'** means patents, copyrights, database rights, design rights, trade marks and any other intellectual property rights, whether registered and unregistered, applications for any of the foregoing, any rights in trade secrets, know-how and other confidential information, and any other form of protection in any part of the world;

**'Month'** means each period of one calendar month beginning on or after the Effective Date;

**'Network'** means a network comprising modems, leased circuits and other telecommunications hardware and software, or any of them;

**'Normal Business Hours':** 9.00 am to 5.30 pm local UK time, each Business Day;

**'Service Levels'** means the levels of performance to which the Service are to be provided to the Client by SYNAPSE, as set out in Schedule 2;

**'Service'** means the CLOUDESHTOP service and the Hosting Service, further details of which are given on the Site;

**'Site'** means SYNAPSE's website at <http://www.synapse.it> or any other site used by SYNAPSE from time to time for the provision of the Service;

**'Standard Charge'** means SYNAPSE's standard charge for supply of the Service, as set out in SYNAPSE's quote attached at Schedule 3 hereto or as varied from time to time in accordance with clause 5.13;

**'Territory'** means the United Kingdom of Great Britain and Northern Ireland; and

**'Synapse Billing Period'** means a calendar month commencing on the 1<sup>st</sup> of that month; and

**'Synapse's Licensors'** means any person who has granted a licence to SYNAPSE in respect of any part of the Service.

In this Agreement, unless otherwise stated:

- 1.2 each reference to:
  - (a) a clause or a paragraph is a reference to a clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule;
  - (b) a Schedule is a reference to a schedule to this Agreement;
  - (c) a statute or statutory provision includes that statute or provision as amended, extended, re-enacted or consolidated from time to time and all statutory instruments or orders made pursuant to it
- 1.3 the **'parties'** means the parties to this Agreement or their respective successors or permitted assignees, and a **'party'** (or a reference to either of them by name) shall be construed accordingly;
- 1.4 words denoting the singular include the plural and vice versa, words denoting one gender include the others, and words denoting persons include firms, corporations or other legal entities;
- 1.5 **'this Agreement'** means the agreement for the provision of the Service to the Client as set out in this document, as amended or extended from time to time;
- 1.6 the word **'including'** shall be interpreted as not limiting the generality of any preceding words;
- 1.7 **'writing'** or any cognate expression includes a communication by fax or e-mail (but not text message or similar means); and
- 1.8 The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **2. REGISTRATION**

- 2.1 To use the Service the Client (or an individual duly authorised by the Client to do so) must first complete the registration process on the Site or over the telephone to a SYNAPSE member of staff.
- 2.2 If an individual registers with the Site on behalf of the Client, the Client must ensure that the individual is duly authorised to do so and to bind the Client. As part of the registration process, the Client (or the individual authorised by the Client) may designate one or more other individuals ('End-Users') who are authorised to use the Service on behalf of the Client.
- 2.3 In order to access the Service, the End-User will be required to enter the username and password selected for the individual in question during the registration process.
- 2.4 The Client may change a password at any time. The Client is responsible for the security and proper use of all passwords and must take all necessary steps to ensure that all passwords are kept confidential, and are used properly and not disclosed to unauthorised people.
- 2.5 The Client must inform SYNAPSE immediately if there is any reason to believe that any passwords have become known to someone not authorised to use it or if any passwords are being or likely to be used in an unauthorised way. SYNAPSE will not be liable if passwords are disclosed or used improperly.
- 2.6 If SYNAPSE has reason to believe that there is likely to be a breach of security or misuse of the Service, SYNAPSE may change any or all of the Client's passwords and notify the Client accordingly.
- 2.7 If the Client (or an End-User) forgets or loses any password, a new password will be issued once the Client (or the End-User) contacts SYNAPSE and satisfies the security checks which SYNAPSE operates.
- 2.8 The Client warrants that all the information supplied by the Client (or the individual authorised by the Client) during the registration process is and will be true, complete and accurate in all respects. The Client agrees to notify SYNAPSE immediately of any changes to its registration information. If SYNAPSE reasonably believes that the Client has provided false information or that the Client has intentionally failed to notify SYNAPSE of any changes to this information, SYNAPSE reserves the right to terminate access to the Service immediately and without notice.

## **3. THE SERVICE**

- 3.1 SYNAPSE will provide the Service to the Client as from the Effective Date, in accordance with Schedules 1 and 2 and subject to the following provisions.
- 3.2 The Client shall be responsible for ensuring that that the Client has an up to date and complete notification in force under the DPA.
- 3.3 The Client shall ensure that:
  - 3.3.1 the Client's computer hardware and software, networking, telecommunications systems, Internet access, e-mail and all other necessary facilities have the necessary functionality and are in proper working order, and the Client has all necessary consents and licences to use the Service, other than those provided by SYNAPSE as part of the Service; and

- 3.3.2 the Client has in place all necessary industry standard safeguards to restrict third party access to the Information and the Service.
- 3.4 Unless otherwise agreed in writing the Services shall include the provision of the following software licences for the use of the Service:
  - 3.4.1 Microsoft Windows with Software Assurance
  - 3.4.2 Microsoft Office Standard with Software Assurance
  - 3.4.3 Microsoft Exchange with Software Assurance
  - 3.4.4 All Citrix/VMWare-related and virtualisation-related technologies
  - 3.4.5 SYNAPSE server side security, anti-virus and anti-spam
- 3.5 Where it is agreed in writing that the Client shall be responsible for the provision of any licences in conjunction with the use of the Service the Client shall:
  - 3.5.1 obtain, pay for and maintain in force all such licences; and
  - 3.5.2 indemnify and keep indemnified SYNAPSE from and against all claims, liabilities, damages, penalties, costs and expenses (including legal expenses and sums paid in settlement of any claim whether actual or alleged) suffered or incurred by SYNAPSE arising out of or in connection with any breach of its obligations in this clause.
- 3.6 SYNAPSE reserves the right to make changes to the Service from time to time without notice to the Client where necessary provided that such changes shall not adversely affect the functionality and/or efficiency of the Service.

#### **4. OFFENSIVE OR ILLEGAL CONTENT**

- 4.1 The Client shall comply with all applicable laws and regulations in using the Service and the Information. Without limiting the foregoing the Client shall not (and shall ensure that End-Users shall not) use the Service to engage in illegal, abusive, or irresponsible behaviour, including:
  - 4.1.1 downloading any illegal material;
  - 4.1.2 making any use of the Service that may overload the network;
  - 4.1.3 unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
  - 4.1.4 monitoring data or traffic on any network or system without the authorisation of the owner of the system or network;
  - 4.1.5 interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
  - 4.1.6 use of an Internet account or computer without the owner's authorisation, including, but not limited to Internet scanning (tricking other people into releasing their passwords), password robbery, security hole scanning, and port scanning;

- 4.1.7 forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting; or
- 4.1.8 any activity or conduct that is likely to result in retaliation against the Services.
- 4.2 The Client shall not (and shall ensure that End-Users shall not) publish, display or transmit via the Services any content that:
  - 4.2.1 constitutes child pornography or is otherwise obscene, sexually explicit or morally repugnant;
  - 4.2.2 is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech;
  - 4.2.3 is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
  - 4.2.4 is defamatory or violates a person's privacy;
  - 4.2.5 creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with a investigation by law enforcement;
  - 4.2.6 improperly exposes trade secrets or other confidential or proprietary information of another person;
  - 4.2.7 is intended to assist others in defeating technical copyright protections;
  - 4.2.8 clearly infringes another person's trade or service mark, patent, or other intellectual property right;
  - 4.2.9 promotes illegal drugs, violates export control laws, relates to illegal gambling, or illegal arms trafficking;
  - 4.2.10 is discriminatory in any way, including by way of sex, race, or age discrimination;
  - 4.2.11 is otherwise illegal or solicits conduct that is illegal under any applicable laws; or
  - 4.2.12 is otherwise malicious, fraudulent, or may to result in retaliation against SYNAPSE.
- 4.3 Content "published or transmitted" via the Service includes Web content, email, bulletin board postings, chat, and any other type of posting, display or transmission that relies on the Internet.
- 4.4 The Client may not use the Service to download, publish, distribute, or otherwise copy in any manner any music, software, art, or other work protected by copyright law unless:
  - 4.4.1 The Client has been expressly authorised by the owner of the copyright for the work to copy the work in that manner; or
  - 4.4.2 The Client is otherwise permitted by copyright law to copy the work in that manner.

## 5. PAYMENT

- 5.1 Where the Client has been introduced to the Services via an authorised reseller of Synapse the Client hereby warrants, represents and undertakes to Synapse that it will comply with the all terms of its agreement obliging it to pay the reseller for the Services.
- 5.2 Where the Client has not agreed to pay the reseller direct for the Services, in consideration of the supply of the Service and the right to use the Information, the Client agrees to pay to SYNAPSE the Standard Charge and clauses 5.3 to 5.12 inclusive below shall apply.
- 5.3 All payments under this Agreement are exclusive of any VAT, for which the Client shall be additionally liable, subject to receipt of an appropriate invoice.
- 5.4 Payment for the use of the Service shall be made using the BACS direct debit system, or as otherwise agreed. It is the Client's responsibility to make the necessary arrangements to enable payment to be made, prior to the commencement of the Service. Further details are set out on the Site.
- 5.5 SYNAPSE shall issue to the Client by electronic means an invoice for the Standard Charge for the provision of the Service in respect of each Month.
- 5.6 The Client must sign and complete a Direct Debit mandate allowing SYNAPSE to debit the Standard Charges based on the number of End-Users using the Services and the activity of such End Users. The Standard Charges are payable in advance based on the number and activity of End Users registered on the system.
- 5.7 By the 5<sup>th</sup> of each month SYNAPSE shall deliver to the Client a statement ("**Monthly Statement**") showing:
- 5.7.1 the number of End-Users currently using the Service; and
- 5.7.2 the total payment in arrears for the Services due to SYNAPSE in respect of the previous Synapse Billing Period.
- 5.8 If the Client does not raise any written objections in respect of the Monthly Statement within 10 days following delivery thereof or if it agrees the Monthly Statement, then the Monthly Statement shall be final and binding on the parties, and the value of the payment due to SYNAPSE for the relevant SYNAPSE Billing Period shall be as set out in the Monthly Statement and SYNAPSE shall issue an electronic invoice to the Client accordingly and shall collect the sum due by direct debit 14 days after the date of the invoice.
- 5.9 Should the Client raise written objections within the 10 day period referred to in 5.8 above then parties shall in good faith attempt to resolve them. If such written objections are not resolved by the last day of the calendar month in which they were raised, SYNAPSE shall be entitled to the sum shown on the Monthly Statement for that SYNAPSE Billing Period but shall issue a credit note to the Client in respect of any overpayment found to have been made or otherwise agreed by the parties.
- 5.10 Time for payment of any sum due under this Agreement is of the essence of this Agreement. If payment of any sum payable under this Agreement is not received in full by the due date for such sum, SYNAPSE shall be entitled, without limiting any other right or remedy it may have, to suspend the Service provided that SYNAPSE shall have given to the Client written / email notice specifying the sum due and requiring its payment within 5 (five) Business Days of the Client's receipt of such notice. SYNAPSE shall give one (1) month's final notice to pay the outstanding balance, if it is not paid in full within this period, SYNAPSE shall be entitled to terminate this Agreement.
- 5.11 Interest will be charged on late payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

5.12 The quote attached at Schedule 3 stipulate the total number of users that will be live for the contract term. Save that SYNAPSE shall allow reductions in SYNAPSE users up to a maximum of 30% to cover "staff shrinkage".

5.13 SYNAPSE may vary the Standard Charge with effect from the start of any period of renewal pursuant to clause 9.2 provided that it shall have given not less than 30 days of its notice of intention to do so.

## **6. RIGHTS IN THE INFORMATION AND CLIENT DATA**

6.1 Except as expressly provided in this Agreement, SYNAPSE reserves to itself and Synapse's Licensors all Intellectual Property Rights and all other rights, title and interest in and to the Site, the Service and the Information. Subject to the foregoing Synapse grants to the Client a non-exclusive licence to use the Service subject to the terms and conditions contained in this Agreement.

6.2 The Client warrants and represents that:

6.2.1 it will, on reasonable request, do all acts and things and execute all documents, deeds and instruments which are reasonably necessary for the protection and enforcement of SYNAPSE's (and SYNAPSE's Licensors') Intellectual Property Rights and rights, title and interest in and to the Service and the Information, and shall not do or permit to be done anything that will or might bring such rights, title and interest into question; and

6.2.2 it will not remove any copyright, database right, trade mark or proprietary marking on the Site or on any Information or any part of the Service.

6.3 The Client shall own all Intellectual Property Rights in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

6.4 SYNAPSE shall follow its standard archiving procedures for Client Data as set out in Schedule 4.

6.5 In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for SYNAPSE to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by SYNAPSE in accordance with SYNAPSE's standard archiving procedure. SYNAPSE shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by the Client or any third party.

## **7. WARRANTIES AND LIABILITY**

7.1 SYNAPSE warrants that:

7.1.1 it is free to enter into and perform this Agreement;

7.1.2 it will use reasonable skill and care to provide the Service; and

7.1.3 it has used reasonable endeavours to ensure that, subject to the Client's compliance with the terms of this Agreement, the use by the Client of the Service and the Information will not infringe the Intellectual Property Rights in the Territory of any other person.

7.2 SYNAPSE shall:

7.2.1 not nor permit any of its members, employees or agents to disclose any Client Data to any third party;



- 7.2.2 maintain continuous security at the data centres in which the Hosting Service is based and ensure that only authorised personnel are permitted to enter such data centres;
  - 7.2.3 take appropriate technical and organisational measures to prevent the disclosure by SYNAPSE and/or any of its members, employees or agents to any third party of any personal data included in the Client Data;
  - 7.2.4 not transfer or permit any third party to transfer any Client Data outside the European Union.
- 7.3 The Service and the Information are provided by SYNAPSE on an “As Is” and “As Available” basis. While SYNAPSE uses its reasonable endeavours to ensure that the Service is provided on a continuous basis, SYNAPSE does not warrant that the Service will be uninterrupted or free from error.
- 7.4 SYNAPSE shall not be liable for any interruptions, faults, interferences, delays, errors or omissions of any kind in or to the Service or the Information or for any loss or damage (whether direct, indirect or consequential) sustained by the Client arising from:
- 7.4.1 any information or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence, or in the wrong form, or arising from their late arrival or non-arrival or any other fault of the Client; or
  - 7.4.2 any cause beyond the reasonable control of SYNAPSE.
- 7.5 SYNAPSE shall have no liability to the Client if the Client uses the Service otherwise than in accordance with this Agreement.
- 7.6 The exclusive remedy under this Agreement is the provision of service credits as set out in Schedule 2. To the fullest extent permitted by applicable laws, and except in respect of death or personal injury arising from SYNAPSE’s negligence, SYNAPSE hereby excludes all liability (whether arising in contract or tort including negligence or breach of any statutory duty or otherwise) for any loss of profits, loss of revenue, loss of data, loss of contracts, or for indirect, incidental or consequential loss or damage of any kind whatsoever with respect to the Service and the Information, and whether or not the possibility of such loss or damage has been notified to SYNAPSE.
- 7.7 In any event SYNAPSE’s total liability (whether arising in contract or tort including negligence or breach of any statutory duty or otherwise) howsoever arising under or in connection with this Agreement or the provision or non-provision of the Service shall not exceed in aggregate the sum of £1,000,000.
- 7.8 Client hereby acknowledges that the provisions of this Agreement including the foregoing limitations and exclusions of liability are reasonable in all the circumstances.

## **8. FORCE MAJEURE**

- 8.1 SYNAPSE shall not be deemed to be in breach of this Agreement, or have any liability to the Client, by reason of any delay in performance, or the non-performance, of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to Force Majeure, and the time for performance of that obligation shall be extended accordingly.
- 8.2 SYNAPSE shall forthwith notify the Client as to the nature and extent of the circumstances in question.
- 8.3 If the performance by SYNAPSE of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of five (5) Business Days, the parties shall negotiate in good faith and use their best endeavours to agree upon such amendments to this Agreement or alternative arrangements as

may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of five (5) Business Days, either party shall be entitled to terminate this Agreement by giving written notice to the other party.

## **9. TERMINATION**

- 9.1 This Agreement shall come into force on the date hereof (the 'Effective Date') and unless sooner terminated in accordance with the following provisions shall continue in force for a period of thirty six (36) months (the 'Initial Period').
- 9.2 At the expiry of the Initial Period this Agreement shall be automatically renewed for a further 12 month period and on the same terms (including this clause), unless terminated by either party by giving 90 days' prior written notice to expire prior to the end of the Initial Period or to the end of any subsequent period of 12 months, or unless terminated in accordance with clause 9.3.
- 9.3 SYNAPSE may forthwith immediately terminate this Agreement by giving written notice to the Client if the Client ceases to be qualified to use the Service or commits any material or persistent breach of this Agreement, or in the event of the Client's bankruptcy, insolvency, a voluntary arrangement with creditors, have a receiver, administrative receiver, administrator or similar official appointed, or if made subject to a winding up order, or go into liquidation.
- 9.4 On termination of this Agreement for any reason:
- 9.4.1 SYNAPSE will cease to provide the Service;
  - 9.4.2 SYNAPSE will provide the Client with the most recent back up of the Client Data at the Client's expense; and
  - 9.4.3 the Client will remain liable for any charges that have fallen due and remain unpaid.

## **10. MISCELLANEOUS**

- 10.1 SYNAPSE may assign its rights under this Agreement to any person and upon any such assignment SYNAPSE will be relieved of any further obligation under this Agreement, but this Agreement is personal to the Client and may not be assigned.
- 10.2 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between SYNAPSE and the Client or create or be deemed to create a relationship of principal and agent between SYNAPSE and the Client.
- 10.3 SYNAPSE's failure to exercise any particular right or provision under this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by SYNAPSE in writing.
- 10.4 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to rely upon or enforce any term of this Agreement, except as provided in clauses 6.1 and 6.2.
- 10.5 This Agreement shall be construed in accordance with and governed by the laws of England and Wales. The parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts, and waive any right to object to that jurisdiction on the grounds that it is an inconvenient forum or otherwise.
- 10.6 This Agreement contains the entire agreement between the parties with respect to its subject matter, to the exclusion of any other terms or conditions which the Client may

put forward, and may not be modified except by an instrument in writing signed by the duly authorised representatives of SYNAPSE and the Client.

- 10.7 The Client acknowledges that, in entering into this Agreement, it does not do so in consideration of or in reliance on any representation, warranty or other provision except as expressly provided in this Agreement and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in this Agreement shall affect the liability of either party for fraudulent misrepresentation.
- 10.8 If any provision of this Agreement is held by any Court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 10.9 Any notice to be given under this Agreement shall be in the English language and sent by personal delivery, first class post, e-mail (accounts@synapse.it) or facsimile transmission to SYNAPSE at its registered office, or to the Client at one of the addresses given as part of the registration process, unless a change of such address has been notified in writing to SYNAPSE or the Client as appropriate. Notices sent by personal delivery or facsimile transmission shall be deemed received no later than the time of delivery or transmission and notices sent by registered post shall be deemed received on the second working day following despatch, Saturdays, Sundays and Public Holidays in each case excepted. A notice will not be valid if given by text message or similar means.

**AS WITNESS** of which this Agreement has been executed by or on behalf of the parties on the date shown above.

Signed by .....  
for and on behalf of Director

Signed by \_\_\_\_\_  
for and on behalf of \_\_\_\_\_ .....  
Director

## **SCHEDULE 1**

### **THE SERVICE**

1. SYNAPSE shall supply the Service in accordance with the following provisions.
2. The Service shall consist of those of the following services for which the Client has issued a Service request in accordance with this Agreement:
  - (a) CLOUDESCTOP virtual desktop Service:
  - (b) any other service: as agreed between the parties in writing.
3. SYNAPSE will:
  - (a) provide a service for the reporting of problems relating to the Service and the provision of technical support in relation to them (the 'Helpdesk'); and
  - (b) provide Helpdesk contact details to the End Users
4. Helpdesk support will be provided by telephone or email, or by remote access, as appropriate.
5. Helpdesk support will be available to End Users during Normal Business Hours on a Business Day or as more fully agreed in Schedule 2.
6. Emergency support will be available 24/7. SYNAPSE may charge for this facility at its standard overtime rates if priority 3 or 4 (as defined in Schedule 2) are escalated to it outside of Normal Business Hours.
7. The Client will:
  - (a) identify the End Users to SYNAPSE;
  - (b) ensure that the End Users provide the following information to SYNAPSE when contacting the Helpdesk:
    - (i) name and contact telephone number;
    - (ii) description of the problem or required assistance.
8. SYNAPSE will:
  - (a) receive, log (date stamped at the time the call is logged) and dispatch or transfer calls, as appropriate;
  - (b) assess and determine the impact of a problem;
  - (c) open a problem ticket to document a problem;
  - (d) perform initial problem determination;
  - (e) provide problem fixes according to the timescales set out in Schedule 2;
  - (f) obtain the agreement of an End User that a problem record can be closed;
  - (g) provide a summary of all problem records in a monthly service review report; and

- (h) resolve any third party service provider performance problems affecting provision of Service.

9. The Client will:

- (a) maintain and provide to SYNAPSE an End User contact list including names, telephone numbers and email addresses for use by the Helpdesk for problem determination assistance and escalation and ensure such personnel are available as required; and
- (b) be responsible for the resolution or closure of all problems related to products and services that are not within the Service.

**SCHEDULE 2**  
**SERVICE LEVELS**

1. **Service availability**

SYNAPSE shall provide at least a 99.9% uptime service availability level (**'Uptime Service Level'**). This availability refers to an access point on SYNAPSE hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the Client is responsible for its own internet access. Availability does not include Maintenance Events as described in paragraph 5(a) of this Schedule 2, Client-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by SYNAPSE to perform the Service), or outages or disruptions attributable in whole or in part to Force Majeure events within the meaning of clause 8.

2. **Availability measurement**

All measurements are performed at two-minute intervals and measure the availability of an availability test page within the Application within 30 seconds. Availability measurement begins on the first day of the first calendar month, beginning not less than 30 days after Client acceptance of the Standard Charge delivered to the Client during the registration and quotation process. Availability measurement shall be carried out by SYNAPSE and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month. SYNAPSE shall keep and shall send to the Client, on reasonable request, full records of its availability measurement activities under this Agreement.

3. **Service credits**

- (a) If availability falls below the Uptime Service Level (as defined in paragraph 1 of this Schedule 2) in a given calendar month (**'Service Delivery Failure'**), SYNAPSE shall credit the Client's account by an amount calculated as the product of the total cumulative downtime (expressed as a percentage of the total possible uptime minutes in the month concerned) and the total Monthly Hosting Fee and Monthly Software Licence Fee owed for that month (**'Service Credit'**).
- (b) A Service Credit shall not be payable unless the Client requests it within 30 Business Days of the service-affecting event(s). The maximum Service Credit allowable in a given month is limited to an amount equal to the total Standard Charge owed by the Client for that month.
- (b) The Client acknowledges and agrees that the terms of this Agreement relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Client would suffer as a result of SYNAPSE's Service Delivery Failure and are not intended to operate as a penalty for SYNAPSE's non-performance, and that subject to these provisions SYNAPSE shall have no further liability to the client in respect of a Service Delivery Failure.

4. **Training**

SYNAPSE shall provide such training to such number of the End Users as is agreed between the parties.

5. **Maintenance Events**

- (a) Maintenance of the CLOUDESHTOP hosted hardware, datacentres, Service or other aspects of the Hosting Service that may require interruption of the Hosting

Service ('**Maintenance Events**') shall not be performed during Normal Business Hours. SYNAPSE will give at least 7 days notice for any Scheduled maintenance events.

- (b) SYNAPSE may interrupt the Service to perform emergency maintenance during the daily window of 10.00 pm to 2.00 am UK time. In addition, SYNAPSE may interrupt the Hosting Service outside Normal Business Hours for unscheduled maintenance, provided that it has given the Client at least three (3) days' advance notice. Any Maintenance Events which occur during Normal Business Hours, and which were not requested by the Client, shall be considered downtime for the purpose of service availability measurement. SYNAPSE shall at all times endeavour to keep any service interruptions to a minimum.

## 6. **Maintenance**

- (a) Maintenance includes all regularly scheduled error corrections, software updates, hotfixes, patches and those upgrades limited to improvements to features. Support for additional features developed by SYNAPSE, as requested by the Client, may be purchased separately at SYNAPSE's then current rates.
- (b) SYNAPSE shall maintain and update the Service. Should the Client determine that the Service includes a defect, the Client may at any time file error reports. During maintenance periods, SYNAPSE may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. SYNAPSE shall use all reasonable endeavours to avoid unscheduled downtime for Application maintenance.
- (c) SYNAPSE shall maintain technical support on the three most current releases of Microsoft Operating System (Windows), Microsoft Office and Microsoft Exchange software that SYNAPSE hosts.

## 7. **Technical support services**

- (a) SYNAPSE shall provide the Client with technical support services ONLY for CLOUDESCTOP Windows desktop, Microsoft Windows, Office and Exchange that SYNAPSE host. The End Users shall be authorised to contact SYNAPSE for technical support services. SYNAPSE shall provide technical support services as specified on the Site from time to time.

### Standard support

Standard support is included as part of the SYNAPSE standard SLA for all CLOUDESCTOP packages. Standard support ensures CLOUDESCTOP desktops and servers remain correctly available and running at suitable access speeds for 99.9% of the time. Standard support ensures uptime of the servers, virtual servers, storage, operating systems and CLOUDESCTOP applications (not including bespoke applications).

It is SYNAPSE's responsibility to keep these working and SYNAPSE can accept support calls for that reason. To avoid any doubt, Standard support does not include LAN support (computers, PC's, laptops, thin client, local desktop) or bespoke application support issues. Bespoke application support is to be provided by the application software vendor, or CLOUDESCTOP reseller. SYNAPSE can act as a single point of contact, should the software vendor be willing for SYNAPSE to do so.

### End User (Desktop) Support (not included in this Agreement)

End User (Desktop) Support is available at additional cost. Please contact SYNAPSE for further information, however an illustration of the service level available with this type of support is as follows:

- SYNAPSE technical support shall accept voicemail, e-mail, phone and web form-based incident submittal from End Users between 9am and 5pm each day
- Emergency support is available 24/7 for emergencies only
- SYNAPSE technical support call centre shall accept calls for English language telephone support during Normal Business Hours within Business Days. SYNAPSE shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Client. SYNAPSE technical support call centre shall respond to all support requests from End Users within the time periods specified below, according to priority
- The named End Users and SYNAPSE technical support shall jointly determine the priority of any defect, using one of following priorities:

<b>Priority</b>	<b>Description</b>	<b>Response time</b>	<b>Target resolution time</b>
<b>Priority 1</b>	The entire Service is "down" and inaccessible. Priority 1 incidents shall be reported by telephone only.	Immediate telephone access. Immediate response if problem within CLOUDESCTOP infrastructure.	Immediate. Two Normal Business Hours maximum. Continuous effort after initial response and with Client co-operation.
<b>Priority 2</b>	Operation of the Service is severely degraded, or major components of the Service are not operational and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only.	Immediate telephone response. Within 30 Business minutes for other contact methods.	Within eight hours after initial response.
<b>Priority 3</b>	Certain non-essential features of the Service are impaired while most major components of the Service remain functional.	Within 2 Normal Business Hours.	Within eight business hours after initial response.
<b>Priority 4</b>	Errors that are, non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Service.	Within 24 Normal Business Hours.	Time is calculated on a case by case basis.



- If no progress has been made on a Priority 1 or Priority 2 incident within the Target Resolution Time, the incident shall be escalated to a manager at SYNAPSE. If the incident is not resolved, then after each successive increment of the Target Resolution Time (for example four Business Hours for a Priority 1 incident, eight Business Hours for a Priority 2 incident), the incident shall be escalated to the Director of SYNAPSE.
- SYNAPSE shall provide monitoring of its Hosting Service as described in this Schedule 1 24 hours a day seven days a week. SYNAPSE shall directly notify the End Users of Maintenance Events (as defined in paragraph 5(a) of this Schedule 1) that may affect the availability of the Hosting Service.

**SCHEDULE 3  
COSTS**

Item Quantity	Item Description	Contractual Term	Set-up Charge	Charge	Payment Frequency
					Monthly
			<i>Total (excluding VAT):</i>		
			<i>VAT@20%:</i>		
			<b>Total (including VAT):</b>		

**Special Instructions:**

The above prices are accurate at the date of this signed agreement. As and when CLOUDESHTOP users are added or removed, your account will be debited accordingly each month for the current number of desktops, multiplied by the above unit price per desktop. The SYNAPSE direct debit scheme is 'elastic', charging each month for the total number of CLOUDESHTOP users.

The Item Quantity above stipulates the total number of users that will be live for the contract term, to cover "staff shrinkage" SYNAPSE allows for a reduction in CLOUDESHTOP users up to a maximum of 30%.

10 days prior to your direct debit, you will receive an invoice and statement.

Your first payment will consist of the set-up fees (if any) and the first instalment of any service fees.

Please indicate how you wish to pay this charge:

- Direct Debit
- Wire/Bank Transfer
- Cheque or Credit/Debit Card (5% surcharge)

**Recurring fees MUST be paid by Direct Debit** (see attached form)

If you wish to proceed with the outlined order, please check and sign this document, accompanying contract, SLA (if applicable) and Direct Debit Instructions and return.

This order form and the attached contract and SLA (if applicable) together constitute a legal 12 month sale agreement between you the End User and SYNAPSE UK LIMITED. This Agreement shall run for an initial period of 12 months from the date of this Agreement, at the expiry of which [Anniversary Date] it shall be automatically renewed for a further 12 month period and on the same terms, unless terminated by either party by giving 90 days' prior written notice to expire at the end of the initial period or any subsequent period of 12 months. By signing this form you confirm that you the Customer are over 18 years old, are authorised to enter into such an agreement on behalf of your company (if applicable) and have read, understood and agree to the terms and conditions laid out in these documents.

**Date:**                   XX-XX-XX

**Date:**                   XX-XX-XX

**Signature:**           \_\_\_\_\_

**Signature:**

**Print Name:**         \_\_\_\_\_

**Print Name:**

**On Behalf Of:**      \_\_\_\_\_

**On Behalf Of:** SYNAPSE UK LIMITED

# SCHEDULE 4

## DISASTER RECOVERY AND OFFSITE BACKUP

