

## Synapto Terms

### PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY BEFORE ACCESSING THE SYNAPTO PLATFORM OR ANY SERVICES MADE AVAILABLE THROUGH IT

#### 1. Introduction

- 1.1 This is a legally binding agreement between you, the merchant ("Merchant") and us, Synapto Ltd whose registered address is 3<sup>rd</sup> Floor, 86-90 Paul Street, London, England, EC2A 4NE ("Synapto") granting the Merchant the right to use and access the Synapto Platform and the Services.
- 1.2 By signing this Agreement, the Merchant agrees to and accepts the following terms which will be binding on the Merchant and any of its Authorised Users when accessing or using the Services. Please note, in particular, the limitations on liability imposed at Clause 19. This is a business-to-business Agreement and is not to be entered into by consumers.

#### 2. Definitions

- 2.1 The following definitions and rules of interpretation apply in this Agreement:

**"Acceptable Use Policy"** means Synapto's acceptance use policy (available here: [https://static.synaptopay.com/acceptable\\_use\\_policy.pdf](https://static.synaptopay.com/acceptable_use_policy.pdf));

**"Agreement"** means the terms of this agreement together with any applicable Subscribed Service Specific Terms and any policies referred to therein;

**"Authorised Users"** means, in respect of the relevant Subscribed Service, the number of users (being employees, or contracts of the Merchant authorised by the Merchant to use that Subscribed Service in accordance with the terms of this Agreement;

**"Business Day"** means a day other than a Saturday, Sunday or bank or public holiday in England;

**"Commencement Date"** means the date on which the Merchant clicks to accept this Agreement;

**"Feedback"** has the meaning given in Clause 16.4;

**"Fees"** means the fees payable by the Merchant to Synapto as set out in Schedule 1 (Licence Fees) and/or the applicable Subscribed Service Specific Terms;

**"Force Majeure"** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;

**"Intellectual Property Rights"** means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; and (e) wherever existing;

**"IPR Claim"** has the meaning given in Clause 16.6;

**"Licence Fee"** has the meaning given in paragraph 1 of Schedule 1 (Licence Fees);

**"Merchant Data"** means all data (in any form) that is provided to Synapto or uploaded to any part of the Synapto Platform by the Merchant or by any Authorised User or any data that is generated as a

result of the Merchant or any Authorised User's use of its own data in the Services (but excluding Feedback);

**"Merchant Systems"** means all software and systems used by or on behalf of the Merchant or any of its direct or indirect sub-contractors, or any Authorised User in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);

**"Onboarding Services"** has the meaning given in Clause 8.1;

**"Permitted Purpose"** means the ordinary business purposes of the Merchant provided such ordinary business purpose does not involve the sale of the following goods/services which infringe the Intellectual Property Rights of a third party, or which is illegal under applicable laws;

**"Permitted Usage Rights"** means the purchased number of Authorised Users and other use restrictions as set out in the Subscribed Service Specific Terms;

**"Relief Event"** means any act or omission by the Merchant, any breach of this Agreement by the Merchant, or any Force Majeure;

**"Services"** means the Synapto Services and any Subscribed Services which the Merchant opts to receive via the Synapto Platform;

**"Subscribed Services"** means the specific services selected by the Merchant via the Synapto Platform and provided to the Merchant by Synapto or its relevant Third-Party Partner, subject to the terms of this Agreement and any Third-Party Terms;

**"Subscribed Service Specific Terms"** means, in respect of each Subscribed Service, the specific additional terms (if any) provided by Synapto to the Merchant at the time the Merchant opts to receive a Subscribed Service (which may be updated by Synapto from time to time on notice to the Merchant) and which shall apply to the receipt of the relevant Subscribed Service under the terms of this Agreement;

**"Subscription Period"** means:

- (a) in relation to the Synapto Services, the period commencing on the Commencement Date and continuing until the expiry or termination of this Agreement in accordance with its terms; and
- (b) in relation to each Subscribed Service, means the term set out in the relevant Third-Party Terms or the Subscribed Service Specific Terms;

**"Synapto Platform"** means Synapto's web application user interface available here: <https://dashboard.synaptopay.com>, its mobile application and its POS terminal application;

**"Synapto Services"** mean the licence to access and use the Synapto Platform granted in accordance with Clause 5.1 together with any Onboarding Services and Support Services offered by Synapto in accordance with Clauses 8 and 10;

**"Update"** means a software maintenance update, patch or bug-fix, or a new version or release of the Synapto Platform intended to have new or improved functionality;

**"Territory"** means the United Kingdom and such additional territory as may be agreed in writing by Synapto from time to time;

**"Third-Party Partner"** means Synapto's third-party partner who provides a relevant Subscribed Services to the Merchant, subject to the Third-Party Terms;

**"Third-Party Software"** means third-party software provided to the Merchant as part of the Subscribed Services;

**"Third-Party Terms"** means a Third-Party Provider's terms and conditions which the Merchant must accept in order to receive the relevant Subscribed Services.

2.2 In this Agreement:

- (a) headings are included for convenience only and shall have no effect on interpretation;
- (b) a reference to a 'party' includes that party's successors and permitted assigns;
- (c) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (d) words in the singular include the plural and vice versa;
- (e) any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and
- (f) a reference to any legislation or legislative provision is a reference to it as amended, extended, re-enacted or consolidated from time to time.

2.3 Any obligation of Synapto under this Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the Territory as generally applicable to businesses and to providers of software as a service solutions. Such obligations shall not be construed to create any obligation on Synapto (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors), except as expressly provided in the terms.

**3. Legal documents**

3.1 This Agreement includes these terms together with any Subscribed Services Specific Terms and any policies referred to in this Agreement, the Subscribed Services Specific Terms.

3.2 If there is any inconsistency in the rights and obligations set out in this Agreement and/or the documents referred to in them the following order of priority shall prevail (in descending order of priority):

- (a) the Subscribed Service Specific Terms;
- (b) any policies referred to in this Agreement or the Subscribed Service Specific Terms;
- (c) these terms.

3.3 Subject to the order of precedence set out at Clause 3.2, later versions of the documents listed at that clause will take priority over earlier versions if there is any conflict or inconsistency between them.

**4. System Requirements**

4.1 Access to the Subscribed Services require the following technical specifications to operate correctly:

- (a) **Supported Operating Systems:** The Synapto's mobile application shall support, at minimum, the two (2) most recent major versions of Android and iOS operating systems. Synapto's mobile application shall be optimized for the latest stable version of each operating system at the time of each release.
- (b) **Web Browser Requirements:** For web-based access, Authorised Users must use modern, stable versions of web browsers, including but not limited to Google Chrome, Mozilla Firefox, Apple Safari and Microsoft Edge. Users are required to keep their web browsers updated to the latest stable version. Beta, developer preview, or any pre-release versions of operating systems or web browsers are explicitly not supported.
- (c) **Updates and Compatibility:** Authorised Users are required to maintain their devices with the most recent stable version of their respective operating system and web browser to ensure optimal performance and security of the Application. Authorised Users shall enable automatic updates for Synapto's mobile application, their device's operating system, and their web browser.
- (d) **Compliance:** The Merchant acknowledges that failure to comply with these operating system and web browser requirements may result in degraded performance, limited functionality, or inability to use the Synapto Platform.
- (e) **Amendments:** Synapto reserves the right to modify these requirements as necessary to maintain the security, functionality, and quality of the Synapto Platform on notice to the Merchant.

## 5. Rights to access and use

- 5.1 Subject to the terms of this Agreement and payment of the Fees, Synapto hereby grants to Merchant a limited, non-exclusive, non-transferable, non-sublicensable (other than as permitted under Clause 5.2) right to access and use the paid for Synapto Services and Subscribed Services for the Permitted Purpose only in the Territory and for the duration of the relevant Subscription Period.
- 5.2 The rights granted in Clause 5.1 include a right for Merchant to grant sub-licences to the Authorised Users, subject to the terms of this Agreement, including those at Clause 7 of this Agreement.

## 6. Limitations on use

- 6.1 Except as expressly permitted under this Agreement, or by law, the Merchant shall not:
  - (a) use, copy, modify, adapt, correct errors, or create derivative works from, the Services;
  - (b) decode, reverse engineer, disassemble, decompile or otherwise translate, or make alterations to the Services, convert the Services, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Services, other than as expressly permitted under sections 50B and 296A of the Copyright Designs and Patents Act 1988 (and then only upon advance notice in writing to us);
  - (c) assign, rent, transfer, provide or enable access, sub-licence, lease, resell, distribute, publish, broadcast, transmit, store, archive, display publicly to third parties, disclose or otherwise deal in or encumber the Services (in each case, whether or not for charge);
  - (d) remove or modify any copyright or similar notices, or any of Synapto's or any other person's branding, that the Services causes to be displayed when used;
  - (e) access or use the Services, or permit them to be accessed or used, by or on behalf of any third party, otherwise than for the Permitted Purpose;

- (f) interfere with any license key mechanism in the Services or otherwise attempt to circumvent or interfere with any security features of the Services or mechanisms intended to limit the Merchant's use; or
- (g) make the Services available over a network or any other method of remote access or facilitate the same.

6.2 Access and use of the Synapto Services and/or Subscribed Services shall be limited to the Permitted Usage Rights only.

6.3 The Merchant shall not exceed the Permitted Usage Rights and acknowledges that the Merchant shall be required, without prejudice to any other rights or remedies to which Synapto may be entitled, to pay Synapto at Synapto's then-current rates for any additional usage of the Synapto Services and/or Subscribed Services.

6.4 The Merchant shall access and use the Services at all times in accordance with any instructions or user guidance and all other terms of this Agreement.

6.5 The Merchant shall notify Synapto in writing as soon as the Merchant become aware of any actual or suspected unauthorised use of the Services (including any use in excess of the Permitted Usage Rights).

## 7. Authorised Users

7.1 The Merchant shall ensure that only Authorised Users use the Services and that such use is at all times in accordance with this Agreement. The Merchant shall ensure that Authorised Users are, at all times while they have access to the Services, the employees or contractors of the Merchant.

7.2 The Merchant shall keep a list of all Authorised Users.

7.3 The Merchant shall ensure that the number of Authorised Users for each Service does not exceed the Permitted Usage Rights and the purchased number of Authorised Users for the relevant Service at any time. The Merchant may remove one individual as an Authorised User and replace them with another individual in accordance with the terms of this Agreement, but Authorised User accounts cannot be shared or used by more than one individual at the same time.

7.4 Without prejudice to any other right or remedy Synapto may have, in the event that the Merchant is in breach of Clause 7.3 then:

- (a) the warranties in Clause 14 shall cease to apply to the relevant Service for the duration of the period during which the Merchant is in breach of Clause 7.3; and
- (b) the Merchant shall be liable to pay an additional licence fee for the number of Authorised Users above the purchased number of Authorised Users based on Synapto's then-current standard pricing for the Services.

7.5 The Merchant shall:

- (a) be liable for the acts and omissions of the Authorised Users as if they were its own;
- (b) only provide Authorised Users with access to the Services via the access method provided by Synapto and shall not provide access to (or permit access by) anyone other than an Authorised User; and
- (c) procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on the Merchant under this Agreement.

7.6 The Merchant warrants and represents that it, and all Authorised Users and all others acting on the Merchant's behalf (including systems administrators) shall, keep confidential and not share with any third party their password or access details for any Subscribed Service.

7.7 The Merchant shall (and shall ensure all Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of this Agreement.

7.8 If any password has been provided to an individual that is not an Authorised User, the Merchant shall, without delay, disable any such passwords and notify Synapto immediately.

## **8. Onboarding Services**

8.1 Synapto shall provide the Merchant with support to on-board the Merchant onto the selected Subscribed Services ("Onboarding Services"), which may include:

- (a) collecting information from the Merchant or other available sources to assist the Merchant in the completion of any applications or other documentation required to subscribe to the Subscribed Services;
- (b) submitting applications and other documentation or information to Synapto's relevant Third-Party Partners for the purposes of the Merchant applying for relevant Subscribed Services and onboarding with the relevant Third-Party Partner, including to facilitate the Third-Party Partner's AML/KYC checks;
- (c) presenting the Merchant with relevant Third-Party Partner's Third-Party Terms in order to subscribe to the relevant Subscribed Services;
- (d) storing relevant information and documentation within the Merchant's account on the Synapto Platform.

8.2 The extent of Synapto's support as described in Clause 8.1 shall vary depending on the Subscribed Services the Merchant elects to subscribe to.

## **9. Subscribed Services**

9.1 The Merchant has the option to sign-up to Subscribed Services provided by Synapto's Third-Party Partners via the Synapto Platform. Access to Subscribed Services is at the sole discretion of Synapto and/or the relevant Third-Party Partner.

9.2 Where applicable, the Merchant must accept the relevant Third-Party Partner's Third-Party Terms in order to receive the relevant Subscribed Services.

9.3 Despite Clause 9.2, the terms of this Agreement, including any relevant Subscribed Service Specific Terms and any other policies referred to in this Agreement shall also apply to the Merchant's use of the Subscribed Services.

9.4 Fees applicable to the Subscribed Services are payable by the Merchant to the Third-Party Partner in accordance with the Subscribed Service Specific Terms or Third-Party Terms. Where the Fees applicable to the Subscribed Services are not payable to Synapto, Synapto may receive a commission or other incentive from the relevant Third-Party Partner for onboarding the Merchant to the Subscribed Services through the Synapto Platform (and for providing any related Synapto Services to the Merchant).

9.5 In accordance with the licence granted by the Merchant in Clause 16.2, Synapto may collect, store, process, transmit and otherwise use the Merchant Data in order to provide the Services. Synapto is expressly permitted to use Merchant Data and share it with Third-Party Partners in order to facilitate the on-boarding and/or provision of the Subscribed Services by a Third-Party Partner. This includes sharing such Merchant Data with a Third-Party Partner as may be necessary for the

Merchant to sign-up for the Subscribed Services (including providing Merchant Data to the Third-Party Provider as part of any application for the Subscribed Services).

- 9.6 Subscribed Services which are subject to Third-Party Terms are provided by Synapto's Third-Party Provider directly to the Merchant and are not provided by Synapto. Synapto does not accept any liability (howsoever arising whether under contract, tort, in negligence or otherwise) for a Third-Party Provider's failure to provide the Subscribed Services and the Merchant agrees to bring any claims it may have in relation to the Third-Party Provider's failure to provide the relevant Subscribed Services directly against the relevant Third-Party Provider.
- 9.7 Synapto shall be entitled to suspend or prevent the Merchant's access to a Subscribed Service via the Synapto Platform immediately upon receipt of a request by the Third-Party Partner to do so. Synapto will use reasonable efforts to notify the Merchant of any suspension or cessation by it pursuant to this Clause unless prevented by the Third-Party Partner from doing so.
- 9.8 The Merchant acknowledges that Synapto does not at any time hold, manage, or control funds on behalf of the Merchant or its counterparties. Payment instructions initiated via the Synapto Platform are executed by third-party payment service providers (including but not limited to Nuapay, Cashflows, Fiserv and the FM BACS scheme) under their own terms, and Synapto shall not be liable for any errors, delays, or failures in payment execution, save where directly attributable to a material defect in the Synapto Platform.
- 9.9 Subscribed Services may include the generation of invoices (including auto-generated invoices) on behalf of the Merchant and/or their contractors, as instructed by the Merchant. The Merchant remains solely responsible for the accuracy, legality, and compliance of any invoice issued through the Synapto Platform.

## **10. Support Services**

- 10.1 Synapto will use reasonable efforts to provide technical support to the Merchant in relation to defects, errors or other technical issues with Synapto Platform. The Merchant can raise a request for support via the methods made available on the Synapto Platform.
- 10.2 Synapto may offer additional support services for specific Subscribed Services. Such additional support is described in the relevant Subscribed Service Specific Terms and will be provided by Synapto for the duration of the relevant Subscribed Services.
- 10.3 Synapto shall use reasonable endeavours to notify the Merchant in advance of scheduled maintenance on the Synapto Platform but the Merchant acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.
- 10.4 The Merchant acknowledges that the Synapto Services do not include:
  - (a) any services, systems or equipment required to access the internet (and that the Merchant are solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Services);
  - (b) dedicated data back up or disaster recovery facilities (and the Merchant should ensure it at all times maintains backups of all Merchant Data); or
  - (c) legal, accounting or other professional or regulated services and that, except as expressly stated in our Agreement, no assurance is given that the Services will comply with or satisfy any legal or regulatory obligation of any person.
  - (d) Any reconciliation, management information (MI), or accounting features available through the Synapto Platform are provided for convenience and operational support only.

Synapto does not provide legal, accounting, or payroll services and makes no representations or warranties as to the completeness or accuracy of such information.

## **11. Fees**

11.1 In consideration of the provision of the Services, the Merchant shall pay the Fees to Synapto in accordance with the terms of this Agreement. The Fees shall include:

- (a) For the Synapto Services, the Licence Fees payable in accordance with Schedule 1 (Licence Fees); and
- (b) For the Subscription Services, any Fees identified in the applicable Subscribed Service Specific Terms.

11.2 Without prejudice to any other right or remedy it may have, if a Merchant fails to pay Synapto any sum under this Agreement on the due date:

- (a) the Merchant shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 2% a year above the Bank of England's base rate from time to time; and
- (b) Synapto may suspend all or part of the Services it is supplying until payment has been made in full.

11.3 All sums payable under this Agreement are exclusive of VAT and the Merchant shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice.

## **12. Changes to services and terms**

12.1 Synapto may at its absolute discretion make updated versions of the documents referred to in Clause 3 or other documents referred to in any part of this Agreement ("New Versions") from time to time by notifying the Merchant of such update by e-mail (together with a copy of the update or a link to a copy of the update) or by any other reasonable means which Synapto elect.

12.2 New Versions will replace the preceding version of the same document(s) for the purposes of this Agreement from the date 20 Business Days' after they are published on the Synapto's platform (or at such later date as Synapto may specify).

12.3 The Merchant acknowledges that Synapto is entitled to modify the features and functionality of the Synapto Platform. Synapto will use reasonable endeavours to ensure that any such modification does not materially adversely affect the use of the relevant Subscribed Service(s) by Synapto's customers generally.

12.4 Synapto may, without limitation to the generality of Clause 12.3, establish new limits on the Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Services, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by a New Version to the relevant impacted contractual documents.

## **13. Records and audit**

13.1 During the Subscription Period and for two years thereafter, the Merchant shall maintain accurate and complete records of the Merchant's and its Authorised Users' access and usage of the Services under this Agreement including:

- (a) the number of Authorised User accounts that the Merchant has purchased; and
- (b) the number and identity of any Authorised Users.

13.2 The Merchant shall allow and procure for Synapto (and any authorised representatives of Synapto) access to audit (and take copies of) the relevant records of the Merchant and the Authorised Users, to the extent necessary to verify that the access and use of the Services is in accordance with this Agreement.

13.3 Unless otherwise agreed in writing, the inspections and audits referred to in clause 13.2 shall be undertaken:

- (a) during the Merchant's normal business hours on Business Days;
- (b) subject to the provision by Synapto of a minimum of five Business Days' notice; and
- (c) not more than twice in any calendar year during the Subscription Period.

13.4 The Merchant shall, at the Merchant own cost, provide all reasonable assistance and co-operation to Synapto in conducting any inspection or audit undertaken under this Clause 13. Synapto will comply with the Merchant's reasonable directions to minimise disruption to the Merchant's business and to safeguard the confidentiality of the Merchant Data.

13.5 At Synapto's request from time to time the Merchant shall promptly (and in any event within two Business Days of such request) provide Synapto with copies of the records referred to in Clause 13.1.

13.6 Synapto may monitor, collect, store and use information on the use and performance of the Services (including Merchant Data) to detect threats or errors to the Services and/or Synapto's operations, for the purposes of the further development and improvement of Synapto's Services, and for such other purposes as described in Synapto's privacy notice at [https://static.synaptopay.com/privacy\\_policy.pdf](https://static.synaptopay.com/privacy_policy.pdf).

13.7 The provisions of this Clause 10 shall survive termination or expiry of this Agreement for a period of two (2) years.

## **14. Warranty**

14.1 Synapto warrants that:

- (a) the Synapto Platform will operate materially in accordance with its description [available at [www.synaptopay.com](http://www.synaptopay.com)] when used in accordance with Agreement under normal use and normal circumstances during the Subscription Period; and
- (b) Synapto will provide the Synapto Services with reasonable care and skill.

14.2 If the Merchant receives any Updates to the Synapto Platform under this Agreement, such Update will be covered under the warranty at clause 14.1.

14.3 If there is a breach of the warranty in clause 14.1, provided that the Merchant notifies Synapto without delay in writing and provides sufficient information to enable Synapto to reproduce any errors, Synapto will, at its option:

- (a) use reasonable endeavours to correct the errors in the Synapto Services within a reasonable time; or
- (b) terminate this Agreement.

14.4 The warranty in Clause 14.1 is subject to the Merchant complying with its obligations under, and using the Services in accordance with, this Agreement and is also subject to the limitations and exclusions set out in Clause 19. In addition, the warranty shall not apply to the extent that any error in the Services arises as a result of:

- (a) incorrect access or use of the Services by the Merchant or any Authorised User (including any failure to follow any instructions set out on Synapto's website);
- (b) access to or use of the Services other than for the purposes for which they are intended;
- (c) modification or alteration of the Services without Synapto's written consent;
- (d) access or use of the Services with other software or on equipment with which it is incompatible;
- (e) any act by any third party (including hacking or the introduction of any virus or malicious code);
- (f) attempted repair, rectification or maintenance by any person other than Synapto or a third party authorised by Synapto;
- (g) any breach of this Agreement by the Merchant (or by any Authorised User);
- (h) failure to notify Synapto of any error within a reasonable period of time of it first occurring; or
- (i) failure to install any Update recommended and made available by Synapto.

14.5 The Merchant acknowledges that Synapto does not give any warranty or representation and does not accept any liability (howsoever arising whether under contract, tort, in negligence or otherwise) in relation to:

- (a) the Subscribed Services;
- (b) the Services meeting the Merchant's individual needs or business requirements, whether or not such needs or requirements have been communicated to us;
- (c) the Services operating in a manner which is uninterrupted or free from minor errors or defects; or
- (d) the Services being compatible with any third-party software or with any particular hardware.

14.6 Subject to Clause 19.5, the provisions of Clauses 14.3 and 16 set out the Merchant's sole and exclusive remedy (howsoever arising, whether in contract, tort, negligence or otherwise) for any breach of Clause 14.1 or for any other error or defect in, defective performance or inability to use the Services or any part of them.

14.7 Other than as set out in this clause 14, and subject to Clause 19.5, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose, reasonable care and skill or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

14.8 If the Merchant accesses the Synapto Platform through a third-party, Synapto accepts no responsibility for the Merchant's ability to access (or continue to access) the Synapto Platform through such third-party. If any relevant engagement between the Merchant and a third-party through which the Merchant accesses the Synapto Platform ends, the Merchant shall promptly notify Synapto.

## **15. Merchant responsibilities**

15.1 The Merchant shall (and shall ensure all Authorised Users shall) at all times comply with all applicable laws relating to the use or receipt of the Services.

## 16. Intellectual Property Rights

- 16.1 The Merchant acknowledges that all Intellectual Property Rights in the Services are owned by or licensed to Synapto, that the right to access and use the Services is licensed (not sold) to the Merchant and that the Merchant shall have no other rights other than those granted under the terms of this Agreement. The Merchant shall have no right to access the Services in source code form. To the extent that the Merchant, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in any part of the Services, the Merchant shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Synapto or such third party as Synapto may elect. The Merchant shall execute all such documents and do such things as Synapto may consider necessary to give effect to this Clause 16.1.
- 16.2 The Merchant and Authorised Users may be able to store or transmit Merchant Data using one or more Services and the Services may interact with Merchant Systems. The Merchant hereby grants a royalty-free, non-transferable, non-exclusive licence for Synapto (and each of its direct and indirect sub-contractors including its Third-Party Partners) to use, copy and other otherwise utilise the Merchant Data and Merchant Systems to the extent necessary to perform or provide the Services or to exercise or perform Synapto's rights, remedies and obligations under this Agreement.
- 16.3 To the extent Third-Party Software is made available to, or used by or on behalf of the Merchant or any Authorised User in connection with the use or provision of any Subscribed Service, such use of Third-Party Software shall subject to any additional third party terms in accordance with Clause 9.2.
- 16.4 Synapto may use any feedback and suggestions for improvement relating to the Services provided by the Merchant or any Authorised User without charge or limitation ("Feedback"). The Merchant hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Synapto at the time such Feedback is first provided to Synapto.
- 16.5 The Merchant hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to Synapto under this Agreement.
- 16.6 If Synapto has reason to believe that a third-party claim may be brought by any third party alleging that the Synapto Services infringe any Intellectual Property Rights of a third party (an "IPR Claim"), Synapto may at its sole option and expense, and the Merchant shall permit Synapto to:
  - (a) modify or replace the Synapto Services to avoid infringement or alleged infringement; or
  - (b) terminate this Agreement.
- 16.7 Subject to Clause 19.5, the provisions of this Clause 16 set out the Merchant's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IPR Claim.

## 17. Relief

- 17.1 To the maximum extent permitted by law, Synapto shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of this Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

## 18. Indemnity

18.1 The Merchant shall indemnify, keep indemnified and hold harmless Synapto (on its own behalf and on behalf of each of its affiliates) from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by Synapto (or any of its affiliates) as a result of the Merchant's breach of this Agreement.

## **19. Limitation of liability**

19.1 The extent of Synapto's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 19.

19.2 Subject to Clauses 19.3 and 19.5, Synapto's total aggregate liability in each Contract Year (howsoever arising) under or in connection with this Agreement shall not exceed the greater of:

- (a) an amount equal to the Fees paid to Synapto by the Merchant in the relevant Contract Year; or
- (b) an amount equal to 12 times the Fees due or paid to the supplier for the first month of the Subscription Period.

19.3 Subject to Clause 19.5, Synapto shall not be liable for consequential, indirect or special losses.

19.4 Subject to Clause 19.5, Synapto shall not be liable for any of the following (whether direct or indirect): loss of profit or revenue; loss or corruption of data; loss or corruption of software or systems; loss or damage to equipment; loss of use; loss of production; loss of contract; loss of commercial opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill; loss of business; and wasted expenditure.

19.5 Despite any other provision of this Agreement, Synapto's liability shall not be limited in any way in respect of the following: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; or (c) any other losses which cannot be excluded or limited by applicable law.

## **20. Suspension**

20.1 Synapto may suspend access to the Services (or any part) to all or some of the Authorised Users if:

- (a) Synapto suspect that there has been any misuse of the Services or breach of this Agreement;
- (b) the Merchant fails to pay any sums due to Synapto by the due date for payment; or
- (c) required by law, by court or governmental or regulatory order.

20.2 Fees shall remain payable during any period of suspension notwithstanding that the Merchant or some or all of the Authorised Users may not have access to the Services.

## **21. Term and termination**

21.1 This Agreement shall come into force on the Commencement Date and, unless terminated earlier in accordance with its terms, shall continue until the last day of the Subscription Period after which it shall automatically expire.

21.2 Each party may terminate this Agreement or the provision of any of the Synapto Services for convenience on not less than 30 days' prior written notice to the other party.

21.3 Either party may terminate this Agreement at any time by giving the other party notice in writing if:

- (a) the other party commits a material breach of this Agreement and such breach is not remediable;
- (b) the other party commits a material breach of this Agreement which is not remedied within thirty (30) days of receiving written notice of such breach; or
- (c) the Merchant fails to pay any Fees due under this Agreement on the due date and such amount remains unpaid for 10 Business Days after the Merchant has received notification that the payment is overdue.

21.4 Any breach by the Merchant of the Acceptable Use Policy or of Clause 6 shall be deemed a material breach of this Agreement which is not remediable.

**22. Consequences of termination**

22.1 Immediately on termination or expiry of this Agreement (for any reason):

- (a) the licences and rights granted by Synapto shall terminate and the Merchant shall (and, if applicable, shall procure that each Authorised User shall) stop accessing and using the Subscribed Services via the Synapto Platform (and ensure that any Authorised Users stop accessing and using the Subscribed Services via the Synapto Platform);
- (b) any Subscribed Services provided by Synapto (and not by a Third-Party Partner) shall cease;
- (c) Synapto may delete or suspend access to any accounts that the Merchant holds with Synapto and any Authorised User accounts;
- (d) the Merchant is not entitled to a refund or other payment, except as otherwise stated in the relevant Subscribed Service Specific Terms; and
- (e) Merchant Data will be treated in accordance with Clause 23.5.

22.2 The Merchant shall be responsible for backing up the Merchant Data regularly and extracting it from the Synapto Platform prior to the termination or expiry of this Agreement.

22.3 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.

22.4 In the event of the termination or expiry of this Agreement or any part of it, the Merchants engagements with Third-Party Partners shall continue in accordance with the relevant Third-Party Terms except the Merchant shall no longer be entitled to receive the Subscribed Services (or the related Synapto Services) which are impacted by the termination (or partial termination) via the Synapto Platform. The Merchant will need to liaise with the relevant Third-Party Partner in relation to the on-going use of such Subscribed Services.

22.5 Any Clause which by its nature is intended to survive termination or expiry of this Agreement shall survive the termination or expiry of this Agreement.

**23. Merchant Data**

23.1 Merchant Data shall at all times remain the property of the Merchant or the Merchant's licensors.

23.2 The Merchant shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Merchant Data and that its use (including use in connection with the Services) complies with all applicable laws and Intellectual Property Rights.

23.3 If Synapto becomes aware of any allegation that any Merchant Data may not comply with the Acceptable Use Policy or any other part of this Agreement, Synapto shall have the right to (in respect only of that part of Merchant Data which is suspected of being non-compliant):

- (a) permanently delete or otherwise remove the relevant Merchant Data from the Services;
- (b) suspend access to the relevant Merchant Data from the Services in accordance with Clause 20; and/or
- (c) disclose Merchant Data to law enforcement authorities (in each case without the need to consult the Merchant).

Where reasonably practicable and lawful Synapto shall notify the Merchant before taking such action.

23.4 Except as otherwise expressly agreed in this Agreement, Synapto shall not be obliged to provide the Merchant with any assistance extracting, transferring or recovering any data (including Merchant Data) whether during or after the Subscription Period. The Merchant acknowledges and agrees that it is responsible for maintaining safe and regular backups and copies of any Merchant Data, including as necessary to ensure the continuation of the Merchant's business.

23.5 Unless otherwise set out in the Subscribed Service Specific Terms or subsequently agreed by the parties in writing, the Merchant hereby instructs that Synapto shall within 60 days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Merchant Data securely dispose of such Merchant Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of the United Kingdom (or a part of the United Kingdom) requires Synapto to store such Merchant Data. Synapto shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Merchant Data undertaken in accordance with this Agreement.

## 24. Confidentiality

24.1 Synapto shall maintain the confidentiality of the Merchant Data and shall not without the prior written consent of the Merchant or in accordance with this Agreement, disclose or copy the Merchant Data other than as necessary for the performance of the Services or its express rights and obligations under this Agreement.

24.2 The Merchant shall keep Synapto's and any Third-Party Partner's Confidential Information secret and treat such Confidential Information with the same level of security, skill and care that it applies to its own Confidential Information, but in no event less than a reasonable degree of care. The Merchant shall not at any time disclose to any person any of Synapto's or its Third-Party Partner's Confidential Information except as permitted by Clause 24.3. The Merchant will only use Synapto's and any Third-Party Partner's Confidential Information solely for the purpose of receiving the Services provided under this Agreement (or in the case of a Third-Party Partner's Confidential Information, the Subscribed Services provided under the relevant Third-Party Terms).

24.3 Synapto and the Merchant (in each case, the "**Recipient**") may disclose Confidential Information (including Merchant Data):

- (a) to their employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Recipient's rights and/or performing its obligations under or in connection with this Agreement; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that in all of the cases set out in this Clause 24.3(b) the Recipient proposing disclosure, will (i) to the extent legally permissible, exercise reasonable efforts to notify the other party prior to such disclosure, and (ii) co-operate with

any reasonable endeavours, as permitted by any Applicable Law, by the other party to limit disclosure or seek protection against disclosure; and

- (c) where Synapto is the Recipient, to a Third-Party Partner for the purpose of Synapto performing its obligations under this Agreement.

24.4 The provisions of this Clause 24 shall not apply to information which:

- (a) is or comes into the public domain through no fault of the Recipient, its officers, employees, agents or contractors;
- (b) is lawfully received by the Recipient from a third party free of any obligation of confidence at the time of its disclosure;
- (c) is independently developed by the Recipient (or any of its affiliates or any person acting on its or their behalf), without access to or use of such Confidential Information; or
- (d) is required by law, by court or governmental or regulatory order to be disclosed.

24.5 This Clause 23 shall survive the termination or expiry of our Agreement for a period of two years.

## **25. Entire agreement**

25.1 This Agreement and any descriptions of the Services made available by Synapto, constitute the entire agreement between the parties and supersede all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

25.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

25.3 Nothing in this Agreement shall limit or exclude any liability for fraud.

## **26. Notices**

26.1 Any notice given by a party under this Agreement shall be:

- (a) in writing and in English;
- (b) signed by, or on behalf of, the party giving it (except for notices sent by email); and
- (c) where sent to Synapto, sent to the address set out in the contact details in the "help" section on [www.synaptopay.com](http://www.synaptopay.com)
- (d) where sent to the Merchant, the address provided to Synapto by the Merchant when the Merchant registered to access the Services.

26.2 Notices may be given, and are deemed received:

- (a) by hand: on receipt of a signature at the time of delivery;
- (b) by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- (c) by email: on receipt of a delivery receipt email from the correct address.

26.3 Notices and other communications sent to Synapto shall be sent to:

26.3.1 Synapto Ltd for the attention of the Chief Operating Officer:

86 – 90 St Paul Street,

**simon.tunnicliffe@synaptopay.com**

This clause does not apply to notices given in legal proceedings or arbitration.

## **27. Variation**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

## **28. Assignment and sub-contracting**

28.1 Synapto may at any time assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of Synapto's rights or obligations under this Agreement, provided that Synapto give the Merchant prior written notice.

28.2 Except as expressly permitted by this Agreement, the Merchant shall not assign, transfer, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of the Merchant rights or obligations under this Agreement (including the licence rights granted), in whole or in part, without Synapto's prior written consent.

## **29. No partnership or agency**

The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

## **30. Severance**

30.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

30.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **31. Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

## **32. Compliance with law**

32.1 The Merchant shall comply with all applicable laws and shall maintain such authorisations and approvals as required from time to time to perform its obligations under or in connection with this Agreement.

32.2 Without prejudice to the generality of Clause 32.1, the Merchant shall comply with all applicable laws, rules, and regulations governing export that apply to the Services and the Merchant Data (or

any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Services or the Merchant Data (or any part) to, or access or use the Services or the Merchant Data (or any part) in, any country for which an export licence or other approval is required, without first obtaining such licence or other approval. The Merchant shall be solely responsible for ensuring its access, importation or use of the Services and the Merchant Data in or into any part of the Territory or elsewhere complies with all export laws.

### **33. Third party rights**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

### **34. Authority**

Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in this Agreement and to perform its obligations under this Agreement.

### **35. Governing law and jurisdiction**

- 35.1 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 35.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on

**SIGNED** for and on behalf of

Signature

Print name

**SIGNED for and on behalf of SYNAPTO LTD:**

Signature

Matt Gilbert

CEO

## Schedule 1 – Licence Fees

1. The Fee for the Synapto Services ("Licence Fee") is:

<b>Merchant Size</b>	<b>Standard</b> 1 Physical location (+online) and up to 5 users	<b>Pro</b> 2-5 locations (+online) and 6-30 users	<b>Custom</b> >5 locations and or more than 30 users
<b>Licence Fee</b>	£9.99	£6.99 per location	Bespoke

2. Synapto shall be entitled to invoice the Merchant for the Licence Fee monthly in advance. The Merchant shall pay each invoice for the Licence Fee in accordance with this Agreement within thirty (30) days of receipt to a bank nominated in writing by Synapto from time to time.