

SYNCHTANK – STANDARD SOFTWARE AGREEMENT

This Agreement consists of these Terms and Conditions, Schedule 1, Schedule 2

Background

The Client wishes to engage SYNCHTANK to provide and maintain a web based SaaS synch asset management software, SynchTank's Service under the terms of this Agreement.

1. Definitions

1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise provides:

"Charges" - the charges set out in Schedule 2 and clause 3 of this proposal.

"Event of Force Majeure" - strike, fire, national or regional power failure, flood or any disaster, act of God, act of terrorism, War or similar event.

"Intellectual Property Rights" - any and all patents, trade marks, design rights, unregistered designs, copyrights, know-how, rental rights and similar current and future rights throughout the world (and including all renewals and extensions) whether or not they are registered or capable of being registered.

"Month" - a calendar month.

"SaaS" - means software as a service.

"SynchTank's Service" - a web site environment provided by SYNCHTANK using SynchTank's Software under the terms of this Agreement, which includes associated technical support.

"SynchTank's Software" - means the proprietary software which is designed and/or owned by and/or licensed to SynchTank as the same is used in SynchTank's Service.

"Term" means the Initial Term (as defined in clause 7.1) and any further period during which this Agreement continues pursuant to clause 7.1.1.

"Uploaded Data and Files" means the music files and data supplied by the Client, which the Client (and/or SYNCHTANK) uploads onto SynchTank's Service.

"Working Day" - means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London between the hours of 0900 and 1700.

2. Consideration

2.1 In consideration for the payment by the Client to SYNCHTANK of the Charges on the terms of Schedule 1 & 2 and clause 3 of this Agreement subject to the terms and conditions of this Agreement, SYNCHTANK shall provide SynchTank's Service to the Client on a worldwide basis. SynchTank's Service facilitates collaboration between the Client and its customers, agents, contractors, sub-contractors and others (collectively "Participants" in this clause 2.1). SYNCHTANK grants a Participant access to and use of SynchTank's Service to the extent that this Agreement remains in force. The Client is not permitted to resell SynchTank's Service without the express written permission of SYNCHTANK.

3. Payment

3.1 In consideration for the provision of SynchTank's Service the Client shall pay to SYNCHTANK the Charges in accordance with the provisions of Schedule 1 & 2 and this clause 3.

3.2 All Charges will be invoiced annually in advance as detailed in Schedule 1 & 2.

3.3 Incremental upgrades to SYNCHTANK's Software as defined in Schedule 2 will be included free of charge if provided by SYNCHTANK to the Client on that basis. The SYNCHTANK Subscription charges defined in Schedule 1 & 2 will be subject to increase of a maximum of 5% on each anniversary of the date of this Agreement during the Term of this Agreement (by written notice from SYNCHTANK to the Client), provided that the Client's right to terminate set out in Clause 7 of this Agreement shall remain in effect at all times.

3.4 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point.

3.5 All invoices submitted by SYNCHTANK shall be paid by the Client before service provision occurs.

3.6 Without prejudice to any other right or remedy of SYNCHTANK, if the Client fails to make any payment under this Agreement on the due date for payment then following prior written notice SYNCHTANK may charge the Client, and the Client shall pay SYNCHTANK on demand, interest on the unpaid amount at the rate of two percent (2%) per annum above the then current base rate of HSBC Bank Plc from the due date for payment until payment is received in full by SYNCHTANK. SYNCHTANK reserve the right to prevent the client from accessing SynchTank's Service in the event of invoices becoming outstanding whilst such invoices remain unpaid.

4. Warranties

4.1 SYNCHTANK warrants and represents:

4.1.1 That it has and will at all times have full power and authority and all necessary third party licences and consents to enter into and perform its obligations under this Agreement;

4.1.2 that all materials produced by SYNCHTANK or otherwise supplied by SYNCHTANK to the Client under this Agreement are SYNCHTANK's own original work (and/or are licensed to SYNCHTANK) and shall not infringe any third party's Intellectual Property Rights nor shall they be obscene, blasphemous, or defamatory nor shall they infringe any English law or regulation; and

4.1.3 that it shall perform all services under this Agreement with reasonable care and skill and to good industry standard.

4.2 Save in the case of death, personal injury or IP infringement resulting from its negligence the aggregate liability of SYNCHTANK under this Agreement (howsoever arising) shall not exceed the sum of three month's Charges invoiced pursuant to clause 3.2.

4.3 SYNCHTANK is not responsible for the Client or any person or company authorised and/or allowed by the Client for the uploading of obscene, blasphemous, defamatory or non-authorised copyrighted data or material onto SynchTank's Service.

4.4 Save in the case of death or personal injury resulting from its negligence, in no event shall SYNCHTANK be liable under this Agreement in respect of indirect or consequential loss or damage (howsoever arising).

4.5 It is the responsibility of the Client and its suppliers to maintain the integrity of the individual log-in security system. SYNCHTANK cannot be held responsible for any consequences of a security breach resulting from any compromise of the security system by the Client or its suppliers.

4.6 The Client warrants and represents that it:

4.6.1 has the full power and authority to enter into this Agreement;

4.6.2 owns or is an authorised licensee of all rights (including but not limited to Intellectual Property Rights) in the Uploaded Data and Files;

4.6.3 will not (nor will any person or company authorised and/or allowed by the Client) upload any obscene, blasphemous, defamatory or non-authorised copyrighted data or material onto SynchTank's Service, nor will the same be contained in any Uploaded Data and Files;

4.6.4 will maintain the integrity of the individual login security system and will use its reasonable endeavours to ensure that no files or data supplied to SYNCHTANK or used in relation to SynchTank's Service contain viruses or trojans of any kind; and

4.6.5 will bear any payments of any kind in respect of Uploaded Data and Files that may be required to any licensor or to any other third party in connection with its use of SynchTank's Service (or otherwise) in accordance with the terms of this Agreement.

4.7 The Client shall indemnify and keep indemnified SYNCHTANK against any loss, damage resulting from any breach by the Client of clause 4.6. Clients liability under indemnity subject to a final settlement consented to by the Client (not to be unreasonably withheld) or final non-appealable judgment of a court of competent jurisdiction.

4.8 Clauses 4.2 to 4.8 inclusive shall continue to have full force and effect both before and after termination of this Agreement (for whatever reason).

5. Intellectual Property Rights

5.1 It is agreed and acknowledged that all Intellectual Property Rights in SynchTank's Service shall belong exclusively to SYNCHTANK (and/or are licensed to SYNCHTANK). It is further agreed and acknowledged that all

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- other Intellectual Property Rights in the Uploaded Data and Files will remain the exclusive property of the Client and its licensors.
- 5.2 This clause 5 shall continue to have full force and effect both before and after termination of this Agreement (for whatever reason).
- 6. Confidentiality**
- 6.1 Each party agrees to keep confidential any and all commercial, technical, financial or other business information concerning the other party to which it may become party during the course of this Agreement and further agrees in particular not to disclose all or any part of that information to any third party, except as may be required by a mandatory rule of law or order of court, tribunal, administrative or regulatory body of competent jurisdiction.
- 6.2 For the purposes of this clause 6 the parties agree that confidential information shall not include:
- 6.2.1 information generally available to members of the public in written or other fixed form or which becomes so available through no fault or breach of this Agreement on the part of the recipient;
- 6.2.2 Information which its recipient can establish by independent evidence was available to it and at its free disposal prior to its receipt under or in connection with this Agreement; and
- 6.2.3 Information at any time received from a third party not apparently bound (after enquiry) by any contractual or fiduciary obligation of confidence and thus free to make disclosure.
- 6.3 It is SYNCHTANK's policy not to release user details to external sources. From time to time SYNCHTANK may contact users for the purposes of communicating information about SYNCHTANK, its product and services.
- 6.4 SYNCHTANK may issue press releases or promotional material relating to the Client and its use of SynchTank's Service for advertising or other purposes before, during or after termination of this Agreement, provided SYNCHTANK receives prior consent from the Client.
- 6.5 This clause 6 shall continue to have full force and effect both before and after termination of this Agreement (for whatever reason).
- 6.6 SYNCHTANK's authorised employee(s) may, from time to time, require access to the Client's version of SynchTank's Service during the Term of this Agreement for the purpose of provide services and support to the Client. For the purposes of facilitating this access, selected SYNCHTANK employees will have administrator login credentials for the Client's version of SynchTank's Service.
- 7. Term and Termination**
- 7.1 This Agreement shall commence on the date at the beginning of this Agreement and subject to the provisions for termination below, shall remain in full force and effect for an initial fixed period of 12 months (the "Initial Term").
- 7.1.1 This Agreement shall continue after the Initial Term on a rolling annual basis until either party gives to the other not less than 30 days prior notice in writing of termination.
- 7.1.2 If the termination notice required under clause 7.1.1 is not received before the 10th day of the month prior to renewal then the Client will be liable for payment for the full SYNCHTANK Charges for the following year.
- 7.2 This Agreement may be terminated by one party giving notice to the other (such notice taking effect immediately) if:
- 7.2.1 the other commits a material breach of any term of this Agreement which (in the case of breaches capable of being remedied) has not been remedied within 30 days the receiving party's receipt of a written request to remedy the breach; or
- 7.2.2 the other is judged by a court of competent jurisdiction to be insolvent and/or is placed into administration (or in the case of an individual is made bankrupt) and/or is wound up (other than for the purpose of a bona fide merger, acquisition and/or reconstruction or amalgamation).
- 8. Force Majeure**
- 8.1 Neither party will be liable for any breach of its obligations resulting from an Event of Force Majeure.
- 8.2 The party affected by an Event of Force Majeure agrees to give notice to the other upon becoming aware of an Event of Force Majeure, that notice containing details of the circumstances giving rise to the Event of Force Majeure and to do everything reasonable to avoid or minimise the resulting delay.
- 8.3 If a default due to an Event of Force Majeure continues for more than twenty-eight (28) days then the party not in default shall be entitled to terminate this Agreement by written notice (that notice being immediately effective, unless the Event of Force Majeure has ended before service of the notice in which case it will not take effect). Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.
- 9. Severance**
- If any provision of this Agreement is determined by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly unenforceable for any reason from time to time, that unenforceability shall not affect the rest of this Agreement which shall continue to have full force and effect, the unenforceable part being deemed severed and deleted.
- 10. Transfer and Use of Third Party Hosts by SYNCHTANK**
- 10.1 Neither party shall assign, transfer, sub-license, sub-contract, charge or otherwise alienate, divide or encumber this Agreement or any of its rights or obligations under this Agreement without the consent in writing of the other party, such consent not to be unreasonably withheld or delayed.
- 10.2 SYNCHTANK reserves the right to use an external hosting facility from time to time in delivering SynchTank's Service to the Client.
- 10.3 SYNCHTANK may from time to time need to undertake system maintenance which will require server downtime. In such circumstances we will attempt to give the client as much notice as possible.
- 11. Further Provisions**
- 11.1 The headings under this Agreement are for reference purposes only and shall not affect its interpretation.
- 11.2 In this Agreement the singular shall include the plural and vice versa save where the context otherwise requires it.
- 11.3 A delay on the part of either party to this Agreement in exercising or enforcing any right available to it under any provision of this Agreement shall not be construed either as a waiver of that or any other right or a forbearance to sue and such right shall continue to be available notwithstanding delay.
- 11.4 No part of this Agreement may be altered save in writing signed by both parties.
- 11.5 This Agreement supersedes all previous representations (except for fraudulent misrepresentations) arrangements and understandings between the parties in respect of its subject matter and sets out the entire agreement between them.
- 11.6 Nothing in this Agreement shall create or be deemed to create a joint venture, partnership, employment, agency or other relationship between the parties and neither party shall hold itself out as being able to bind the other.
- 11.7 The eiusdem generis rule shall not apply, so that general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.
- 12. Notices**
- Any notice required to be served in writing by this Agreement shall be delivered personally or sent by first class pre-paid post to the address of the recipient stated above (or to such other address as has been notified to the sender as the proper address for service) or transmitted by facsimile or e-mail (support@synchtank.net in SynchTank's case) to the correct number or e-mail address for the time being of the recipient (provided that in the case of email a delivery and read receipt shall be requested in each case and shall be required to evidence notice via email). Any such notice shall be deemed properly served, in the case of personal delivery on delivery, in the case of facsimile transmission or e-mail upon transmission (provided that the sender can demonstrate receipt of an error free facsimile or e-mail receipt as specified above and that a copy of the notice is also sent by first class pre-paid post to the recipient on the same day as the facsimile or e-mail, as the case may be, is sent) or in the case of posting two clear working days after the date of posting (which in the case of contention shall be established by affidavit evidence provided by the sender).
- 13. Governing Law and Jurisdiction**
- This Agreement shall be exclusively governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.