

ASP Terms and Conditions

Synergy Global Solutions (hereby known as "Synergy" and formerly known as Western New York Computing Systems) will provide the hosted services "SuccessWare ASP" according to the following terms and conditions. In signing the SuccessWare ASP Service Agreement form, the Buyer and the users representing the Buyer agree to be bound by these terms of service.

- 1) **Service Description.** Synergy is in the business of offering the SuccessWare@21 application from SuccessWare Inc. as a hosted service whereby users can access their specific company database through a secure internet connection.
- 2) **Coverage.** Hosted services are available twenty four hours a day year round except for those hours within the Maintenance Window. Helpdesk support for the services will be provided during standard business hours which is defined as that period of time between 8:00 AM and 8:00 PM Eastern Standard Time, Monday through Friday, Holidays excluded. Holidays shall mean the regularly scheduled holidays of Synergy Global Solutions (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). After hours support is provided outside normal business hours for assistance with critical problems.
- 3) **Maintenance Services.** Synergy will perform the necessary administration, support and maintenance of the hosted service; correcting malfunctions, effecting necessary repairs, performing such adjustments and replacement of equipment parts as deemed necessary by Synergy so as to maintain the service in good working order. Synergy periodically adds, repairs, and upgrades equipment and software, usually without affecting user access. Synergy schedules a system unavailability period every day from 12AM (midnight) to 5AM Eastern Standard Time. While maintenance and updates are rarely necessary, Synergy reserves this time frame to perform these services. Synergy may have to interrupt services outside of this window due to system emergencies, in which case we will attempt to announce the scheduled downtime via network broadcast message.
- 4) **Internet Based Service.** Synergy represents itself and the services as a secure Application Service Provider. Services are available through each user's high speed internet connection; bandwidth requirements are based on the number of concurrent users that will be accessing the services as well as other local user internet activities and use. Users of the service must install the Citrix client software to securely connect to the Synergy datacenter and run their company SuccessWare@21 application. For printing to properly work through the Citrix client, user printers must be listed on the Microsoft compatibility list. Some printers listed may not work properly. Synergy will provide assistance resolving printing issues with printers listed on Microsoft's list; printers not listed may not be supported. Users assume all responsibility for their connection to the Internet. Synergy makes no warranty that Internet services will meet user's requirements, that services will be uninterrupted, timely, secure, or error free. Synergy is not responsible for user Internet connection charges, calling activities, or phone bills.
- 5) **Firewall Service.** Any firewall hardware/software supplied as part of this service is the property of Synergy and must be returned to Synergy within 30-days of cancellation of this agreement. Any unit not returned will be billed to your account. Firewalls will be preconfigured with standard configuration and sent for customer installation. Any configuration changes outside the scope of the ASP service are billable at Time and Material rates. Units come with Next Business Day express exchange support.
- 6) **System Backup.** Backups will be performed and verified on a daily, as well as monthly, basis. For the protection backup tapes will be stored off-site.
- 7) **ASP Connection.** A connection session is a continuous block of usage from the time a user logs in until the moment they disconnect. An idle connection consumes Synergy network resources and degrades overall performance. For security purposes, Synergy will limit session times to twelve (12) hours and idle times to two (2) hours. The disconnection default is set to fifteen (15) minutes. If disconnected, users are free to re-connect immediately to establish a new session.
- 8) **User Responsibility.** Users may not knowingly spread viruses, create or propagate massive bandwidth-consuming data, nor intentionally cause excessive unwanted traffic or resource consumption on the Synergy network. Users may not willfully tamper with the security of Synergy systems, the accounts of other customers, render systems unusable, nor make public any business or system-related material encountered within the Synergy network. Synergy shall take reasonable precautions to protect the security of each Buyer data and systems, but shall in no way be held liable for the security of Buyer data or systems since the Buyer controls its users assigned application access through the SuccessWare@21 application.
- 9) **Help Desk.** Help desk support is limited to resolving issues associated with the functionality of services: connectivity and operation of the SuccessWare@21 application. Help desk support will not be provided for user desktop computers, terminals, modems, private networks, public network services, Internet connections, or Application features, unless additionally contracted for with Synergy. Support for the SuccessWare@21 application will be provided by SuccessWare.
- 10) **Equipment Accessibility.** Each user shall provide Synergy with full access and availability to their desktop as necessary to support the user's Citrix connection to the datacenter as well as assist with troubleshooting Internet service problems. The Buyer will ensure that an appropriate representative is present while service is being provided. Buyer is responsible for implementing safeguards to protect all programming, programs, data, removable storage media, documentation, supplies, options, alterations, and attachments, before any equipment is presented for service.
- 11) **Restraints.** Synergy will, as part of a service agreement, provide initial response and problem determination for items under contract. After reasonable time for problem resolution, subsequent repeated service requests resulting from lack of Buyer action are billable to the Buyer on a Times and Material basis.
- 12) **Licensing.** Synergy warrants that it has the appropriate licenses to host SuccessWare@21 and offer the Buyer the service. Synergy is not responsible for any other Buyer application or operating system license requirements.
- 13) **Term.** The initial term of this agreement shall commence on the date of the agreement and continue for three (3) years.
- 14) **Service Renewals.** Renewal periods are one (1) year in duration. Renewal periods are considered automatic unless either party cancels the agreement in writing via Certified Mail within thirty (30) days of the applicable anniversary date.
- 15) **Buyer Association with Membership Groups.** Buyers that are members in one of the listed associations, franchises or other contract groups (hereby known as "membership group") are setup and administered according to guidelines of the membership group.



SuccessWare **ASP**

Powered by Synergy Global Solutions

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877-88-GO-ASP

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- 16) **Service Fee.** The Buyer provides Synergy a list of users who need access to the Buyer SuccessWare@21 application hosted at Synergy. The Buyer will be charged a fee for each user listed. A one time setup fee is also charged for creating the Buyer accounts and company database setup at Synergy.
- 17) **Adding or Removing Users.** During the Agreement term, Buyer may add additional users at anytime for a minimum of ninety (90) days. An additional user fee will be billed to Buyer for each subsequent user. After ninety (90) days, the Buyer has the option of removing the user anytime thereafter and the service fee will be reduced accordingly.
- 18) **Payment.** Initial payment is due prior to activation of each Buyer account or addition. Initial payment includes the first ninety (90) days of service from the date that the Buyer's account or addition is activated, which may differ from the date the Buyer first uses the account or addition. An initial setup fee may be charged. Services will be billed against a Buyer provided credit card account. Following account activation, the Buyer's credit card will be billed by the fifteenth of the first month of the Buyer's quarterly billing cycle, charging in advance for services to be provided in the following quarter.
- 19) **Past Due Accounts.** Payments that are past due are subject to a 1.5% per month finance charge calculated from the due date. Buyer accounts past due more than sixty (60) days may be suspended, at the discretion of Synergy. A Buyer account that has been suspended for non-payment will not be reconnected until the balance due on the account has been paid in full, in addition to a fifty dollar (\$50.00) reconnection charge. Suspension of an account does not remove the Buyer's obligation to pay the outstanding balance in full. A Buyer account that has been suspended for thirty (30) days may be cancelled at the discretion of Synergy.
- 20) **Price Changes.** Synergy may at any time adjust its basic charges for services after giving sixty (60) days written notice. Buyer may terminate this agreement by giving written notice to Synergy thirty (30) days prior to the effective date of the price increase. Synergy's hourly rates for services outside of this agreement are subject to change without notice. In the event services are altered, Synergy reserves the right to reassess pricing.
- 21) **Definitions of Suspension and Cancellation.** Suspensions will result in logon attempts to the account being blocked. Service fees still apply as well as accrue during the suspension period. Cancellation will result in all Buyer data being returned via File Transfer Protocol (FTP) or CD to SuccessWare; SuccessWare will coordinate with the Buyer data transfer to the Buyer. The account will be terminated following the receipt of data.
- 22) **Withdrawal or Cancellation.** Buyer may withdraw from coverage or cancel this Agreement at any time after giving thirty (30) days written notice to Synergy. The initial setup fee is non-refundable. If Buyer cancels prior to using the ASP service the original first quarter's invoice will be credited. If Buyer cancels service after initial use of ASP service, the first quarter's service billing is non-refundable. Thereafter, Buyer may cancel without right to refund of any portion of the charges paid or due. Upon cancellation, Synergy will provide a complete copy of the Buyer database to SuccessWare. SuccessWare will coordinate with the Buyer the move of the database back to the Buyer local network servers.
- 23) **Confidentiality.** All parties must treat, and require its employees, agents and contractors to treat, all information of other parties as confidential except that which is publicly available. No party may disclose any information regarding the other party without written approval as signed by authorized personnel except as governed by law.
- 24) **Exclusions.** Services do not include; (a) furnishing of equipment other than the Citrix client software and, if service purchased, ASP firewall; or (b) support of client systems other than connectivity to the ASP services.
- 25) **Additional Services.** Upon request, Synergy may, at its option, provide the following services at an additional charge:
 - a) Repair of services caused by:
 - i) Tampering, negligence, or use of the service in a fashion other than for which the service was designed, or
 - ii) Alteration to the service other than those performed by Synergy, or its agent's, maintenance personnel;
 - b) Any services rendered in the entry, use, recovery of, or protection of Buyer data, whether or not the condition was caused by, or related to, a malfunction of the service;
 - c) Installation and configuration of the Citrix client; or Internet services and gateway firewall appliances.
 - d) Other services rendered for Buyer as part of a Buyer's membership in an association, franchise or membership group; such as reporting services.
- 26) **Force Majeure.** Synergy cannot be held responsible for circumstances amounting to Force Majeure; acts of God, adverse weather, strikes, quarantines, criminal acts, acts of war, pilferage, government restrictions, machine breakdown or anything resembling such which are clearly beyond Synergy's control. Any expenses incurred are the sole responsibility of each customer affected.
- 27) **Rights and Obligations.** The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of New York, except its law with respect to choice of law. Any action arising out of, or relating to, this Agreement will be brought in the State or Federal Courts located in Erie County, New York.
- 28) **LIMITATION OF LIABILITY.** SYNERGY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR DATA, OR FAILURE TO REALIZE SAVINGS) REGARDLESS OF THE LEGAL FORM OR BASIS FOR ANY SUCH DAMAGES, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH ANY CLAIM ARISING OUT OF THIS AGREEMENT, OR THE FURNISHING, PERFORMANCE, OR USE OF ANY OF THE GOODS OR SERVICES PROVIDED FOR HEREIN. IN NO EVENT SHALL SYNERGY' LIABILITY EXCEED ONE YEAR'S ANNUAL CHARGES FOR SERVICES PAID BY BUYER UNDER THIS AGREEMENT.
- 29) **NOTICES.** Unless otherwise addressed in this Agreement, any notice hereunder shall be sent by United States first class mail prepaid to the addresses shown on the signature page.

