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1. Definitions.

1.1. "Agreement" means collectively, this Product License Agreement, together with the Licensing Guide and any schedule, exhibit, or other document that references this Agreement.

1.2. "Authorized Maximum Users" means the number of Users ordered by Licensee or Supplier, and approved and authorized by Synergex.

1.3. "Documentation" means all product manuals, installation instructions, user guides, and all other materials published or otherwise made available by Synergex to customers that describe the functional capabilities of the Products.

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1.6. "Licensing Guide" means Synergex's Synergy/DE Licensing Guide (or successor document) that is current when this Agreement is accepted. The Licensing Guide describes how Synergex Products are licensed and can be found at www.synergex.com/agreements/SDE_LicensingGuide.pdf.

1.7. "Products" means the Synergex Synergy/DE computer software and Documentation provided to Licensee pursuant to this Agreement, and all patches, modifications, additions, updates, and upgrades thereto.

1.8. "Supplier" means an authorized reseller of Synergex Products.

1.9. "Synergex" means Synergex International Corporation, a California corporation, 2330 Gold Meadow Way, Gold River, California 95670.

1.10. "Trademarks" means trademarks, service marks, trade names, logos, labels, taglines and designs, whether or not registered.

1.11. "User" means an entity that accesses the Products, such as the desktop, a process, or a service, as further described in the Licensing Guide.

2. License Grant.

2.1. Grant. Subject to the terms and conditions of this Agreement, Synergex grants Licensee a non-exclusive, non-transferable, revocable license to use the Products only for Licensee's internal business purposes as provided in this Agreement.

2.2. Products Other Than xfServerPlus and SQL Connection. Products other than Synergy/DE xfServerPlus and SQL Connection are licensed for the number of Users that may use the Products concurrently, as further described in the Licensing Guide. The Products may only be used concurrently by the Authorized Maximum Users for such Products.

2.3. xfServerPlus. Licensing for xfServerPlus is based on concurrent Users of the Synergy/DE-based application(s) using xfServerPlus (the "Application(s)") rather than concurrent Users of xfServerPlus, as further described in the Licensing Guide. The Application(s) may only be used concurrently by the Authorized Maximum Users of xfServerPlus.

2.4. SQL Connection. Licensing for SQL Connection is based on the number of connections made from the Synergy/DE-based application(s) to third-party databases. Each connection made by the Application(s) requires an "SQL Connection User", as further described in the Licensing Guide.

2.5. Obligation to Ensure Accuracy of User Count. Licensee shall ensure at all times that the number of actual Users does not exceed the Authorized Maximum Users and shall promptly inform Synergex or Supplier of any discrepancies between the actual number of Users and the Authorized Maximum Users. Upon request from Synergex or Supplier,

Licensee shall promptly provide to Synergex or Supplier full, clear and accurate records of the actual number of Users for each Product during the term of this Agreement, including without limitation the time periods during which they were Users. If the actual number of Users at any time was more than the Authorized Maximum Users, Licensee shall pay to Synergex or Supplier the amounts that would have been paid to Synergex or Supplier had such additional Users been identified as Users for such periods.

2.6. Audit. Synergex shall have the right, on reasonable written notice of at least 10 days and during Licensee's regular business hours, but not more than once in each calendar quarter, to audit and inspect Licensee's books of account and records insofar as they relate to the use of the Products. Such audit and inspection shall be at Synergex's expense, unless such audit and inspection shows an underpayment of fees by Licensee to Synergex or Supplier of 5% or more for any time period; in such case, Licensee will reimburse Synergex for the cost and expense of such audit and inspection.

2.6. Licensing Guide. Additional details and specific examples of Synergex licensing policies are included in the Licensing Guide, located at www.synergex.com/agreements/SDE_LicensingGuide.pdf. Licensee agrees to the policies and methodologies set forth in the Licensing Guide.

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4.2. Use of Trademarks. Notwithstanding the provisions of Section 4.1, each party further agrees to permit the other party to use its Trademarks on the other party's web sites, marketing literature, and other material where appropriate, in such form and manner as is reasonably acceptable to, and subject to approval of, the other party. Each party shall specifically state that the other party's Trademarks are the sole and exclusive property of the party owning the Trademark.

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5. **Fees.**

5.1. License fee rates and policies are as established in separate agreement or other authorized arrangement (for example, order schedule, invoice, facsimile, or e-mail) between Licensee and Synergex or between Licensee and Supplier.

6. **Term & Termination.**

6.1. Term. This Agreement will become effective ("Effective Date") when Licensee accepts the terms and conditions of the Agreement, either by clicking an "I ACCEPT" button or by signing a hard or electronic copy of the Agreement. The initial term of the Agreement will begin on the Effective Date and continue in effect for the period including the month in which the Agreement commenced and the 12 consecutive months thereafter, and thereafter for successive one-year terms, unless terminated as provided herein.

6.2. Termination. Either party may terminate this Agreement at the end of the then-current term by giving the other party notice of non-renewal at least 60 days prior to the end of the term. Either party may terminate this Agreement for cause upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such notice period. This Agreement also may be terminated by either party immediately and without notice if the other party becomes insolvent, files a petition in bankruptcy or petition for other similar relief, or ceases to conduct business in the ordinary course, and such condition is not remedied within 30 days of its occurrence.

6.2.1. Effect of Termination; Survival of Obligations. Licensee's obligations under this Agreement shall survive any termination or expiration of the Agreement.

6.2.2. Effect of Termination: Suspension of Products. In the event that this Agreement is terminated by Synergex for cause, in addition to any of its other rights or remedies, Synergex reserves the right to withhold product configuration keys from Licensee, which may cause the Products to stop working.

6.3. Removal of Products. Upon termination of this Agreement, Licensee shall immediately cease use of the Products and remove from Licensee's systems all copies of the Products, and all derivative works, in its possession or control. This includes deleting all Products and derivative works from all hard drives, networks, and other storage media where they reside. Within 15 days after termination, Licensee shall provide to Synergex or Supplier written certification, signed by an executive officer of Licensee, that all copies of the Products have been removed.

7. Warranties; Remedies; Indemnification.

7.1. Warranties; Remedies. Synergex warrants that the Products, when properly installed and used in accordance with Synergex's instructions, will conform in all material respects to the applicable Documentation, provided, that Licensee is not otherwise in breach of this Agreement. HOWEVER, SYNERGEX DOES NOT WARRANT THAT THE PRODUCTS, OR USE OF THE PRODUCTS, WILL BE ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE PRODUCTS. THE PRODUCTS ARE PROVIDED "AS IS" AND SYNERGEX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. SYNERGEX'S ENTIRE RESPONSIBILITY SHALL BE, AT SYNERGEX'S OPTION, EITHER (A) TO MAKE AVAILABLE TO LICENSEE ALL PUBLISHED PATCHES, UPDATES, AND UPGRADES MADE BY SYNERGEX TO THE PRODUCTS DURING THE TERM OF THIS AGREEMENT; OR (B) TO USE REASONABLE EFFORTS TO RESPOND TO WRITTEN NOTIFICATION OF ERRORS RECEIVED FROM LICENSEE OR SUPPLIER. IF SYNERGEX IS UNABLE TO MAKE THE PRODUCTS OPERATE AS WARRANTED, LICENSEE SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT.

7.2. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, SYNERGEX AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT, PROPERTY AND SERVICE SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND SYNERGEX'S CONTROL, EVEN IF SYNERGEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY LICENSEE TO SYNERGEX OR ITS SUPPLIERS FOR THE PRODUCTS UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OR EVENT THAT GAVE RISE TO THE LIABILITY.

7.3. Third-Party Providers. Certain third-party providers, some of which may be referenced on Synergex's web sites or in Documentation, may offer products and services related to, or that work in conjunction with, the Products. Synergex does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by Synergex as "certified," "validated" or otherwise. Any exchange of data or other interaction between Licensee and a third-party provider, and any purchase by Licensee of any product or service offered by such third-party provider, is solely between Licensee and such third-party provider.

8. General Provisions.

8.1. Notices. All notices required or permitted hereunder shall be given in writing addressed to the respective parties as set forth in the Order Schedule, unless another address shall have been designated, and shall be delivered by hand or by registered or certified mail, postage prepaid.

8.2. Governing Law; Venue. The rights and obligations of the parties and the interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rules. The exclusive venue of any action shall be the state or federal courts located in Sacramento, California.

8.3. Attorneys' Fees. If Synergex is required to engage in any suit or proceedings to enforce its rights under this Agreement, Synergex shall be entitled to recover from Licensee, in addition to any other sums due, the reasonable attorneys' fees, costs, and necessary disbursements involved in said suit or proceedings. In addition, Licensee shall pay Synergex its reasonable attorneys' fees and costs incurred in enforcing any judgment, order or decree issued by a court, arbitrator or other authority in such proceedings, or in collecting any monetary award made to Synergex in such proceedings.

8.4. Assignment. This Agreement may not be assigned or otherwise transferred by Licensee without the prior written consent of Synergex, which will not be unreasonably withheld. Licensee will be responsible for any transfer fees set forth by Synergex or Supplier.

8.5. Conduct. At all times during the term of this Agreement, Licensee will act in accordance with all applicable federal, state and local laws and regulations.

8.6. Entire Agreement. This Agreement (including the Licensing Guide and other documents referenced and incorporated herein) constitutes the entire agreement of the parties.

8.7. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition.