SOFTWARE-AS-A-SERVICE ("SaaS") AGREEMENT TERMS & CONDITIONS

Dynamatix Limited has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis. Dynamatix will grant access to the Services on the basis that the terms and conditions of this Agreement apply to such use. By accessing and/or using the Service, the Customer agrees to be bound by the terms of this Agreement.

1. Definitions

The following definitions apply to all of these terms and conditions:

Agreement means the terms and conditions of this SaaS Agreement between Dynamatix and the Customer including any referenced terms including but not limited to the Order Form.

Dynamatix means Dynamatix Limited, Suite 2-9, Margaret Powell House, 401-447, Midsummer Boulevard, Central Milton Keynes, MK9 3BN and shall include that company's successors and assigns.

Customer means the end user as named on the Order Form who is licensed by Dynamatix to use the Service.

Customer Data means data inputted by the Customer or Users, or Dynamatix on Customer's behalf, for the purpose of using the Services.

Documentation means the documents including on-line manuals made available to the Customer by Dynamatix which describes the Service and the User instructions for the Service.

Service Fees means the subscription and usage fees payable for accessing and using the Service and stated in the Order Form.

Service(s) means the on-demand subscription services to the Software provided by Dynamatix to the Customer via its portal notified to the Customer from time to time as more particularly described in the Documentation;

Severity 1 Issue means an issue that critically affects the primary business service, major application, or mission critical system due to a bug in the Software. Customer resources should be available and willing to work on a 24x7 basis with Dynamatix to resolve the issue. Characteristics of a Severity 1 issue include: (1) Business service is not operational; (2) Production system crashes; or (3) Data integrity at risk.

Software means the on-line software applications provided by Dynamatix as part of Service.

User means authorised employees, agents and contractors of the Customer who are authorised by the Customer to use the Service.

Virus means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data.

Working Hours means 0900 – 1700 hours on a Monday to Friday excluding English public holidays.

2. Term

2.1 Subject to the Customer paying the applicable Service Fees and complying with the terms of this Agreement, Dynamatix grants to the Customer a non-exclusive, non-transferable right to permit the Users to use the Services and the Documentation during the term of this Agreement, solely for the Customer's internal business operations.

2.2 The term of this Agreement shall be for the Initial Service Term stated in the Order Form or, if no such period is stated, for a period of one year. After the Initial Service Term, this Agreement will extend automatically on a rolling month basis unless a termination notice is served by the Customer with a one month notice period.

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3. Customer Obligations

The Customer agrees:

3.1 it will not allow the number of Users to exceed the permitted number of subscriptions paid for;

3.2 where the number of Users shown in the Order Form are exceeded, it will purchase the necessary additional subscriptions to accommodate the higher volumes;

3.3 where the Service Capacity Limitations shown in the Order Form are exceeded, it will purchase the necessary upgrade to accommodate the higher volumes;

3.4 that the Service may incorporate technical means of enforcing or monitoring these terms which may result in it being unable to access the Service beyond the term of this Agreement or where it is in breach of this Agreement;

3.5 it shall be responsible for the Users complying with the terms of this Agreement including any breach by a User and on request provide Dynamatix with a list of current Users;

3.6 it will not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
  (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  (b) is discriminatory or any other illegal activity; or
  (c) causes or may cause damage or injury to any person or property;

3.7 it will not translate, adapt, arrange, alter, modify, decompile, disassemble or reverse engineer the Software or its design or Documentation or any part of it;

3.8 it will not sell or sub-license or lease or assign the Services or this Agreement to any third party;

3.9 to use all reasonable endeavours to prevent unauthorised access to, or use of, the Services and/or the Documentation and in the event of any such unauthorised access or use promptly notify Dynamatix; and

3.10 to be responsible for procuring and maintaining its network connections and telecommunications links from its systems to Dynamatix's servers.

4. Services

4.1 Subject to payment of the Service Fees, Dynamatix shall during the term of this Agreement provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 Dynamatix shall use commercially reasonable endeavours to make the Services available 24 hours a day seven days a week except for:
  (a) scheduled maintenance; and
  (b) emergency maintenance.

4.3 Dynamatix shall provide the Customer with Dynamatix's standard support services during Working Hours. Any post-implementation change requests would be charged at £50/ hour (minimum 2 hours per request). This fees could be waived off at Dynamatix's discretion if number of its clients have similar requirement as in the change request.

4.4 For a Severity 1 issue, please contact our Severity 1 hotline **+44 207 096 0015** to immediately engage the development team.

5. Customer Data

5.1 The Customer shall own all rights, title and interest in the Customer Data and shall have sole responsibility for the legality, reliability, accuracy and quality of the Customer Data.

5.2 Dynamatix shall take nightly backup of Customer Data. Such backups could also be provided to Customer's IT team using a secure FTP site on a nightly basis for local archival. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Dynamatix to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Dynamatix.

5.3 All Customer Data held by Dynamatix shall be kept on servers within the European Union.

5.4 Dynamatix shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

6. Warranties

6.1 Dynamatix warrants that the Services will during normal use provide the facilities and functions described in the Documentation. Such warranty will commence upon completion of user acceptance testing of the Service by the Customer and continue for so long as this Agreement is in place.

6.2 If any of the Services fails to comply with the warranty mentioned above Dynamatix shall at its option either modify such part of the Services until it complies with the warranty or replace such item of Software with software which complies with the said warranty.

6.3 Dynamatix undertakes at its own expense and within a reasonable time, to remedy any program errors materially affecting the performance of the Services provided the Customer has provided notice of the breach in writing by e-mail to **support@dynamatix.com**.

6.4 Dynamatix does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.

6.5 The Services are provided on an "as is" basis, and Dynamatix does not warrant that these will operate in conjunction with any hardware items or software products other than with those that are identified by Dynamatix as being compatible with the Services.

6.6 The Customer acknowledges that the Services are not bespoke and have not been prepared to meet the Customer's individual requirements and that it is, therefore, the responsibility of the Customer to ensure that the facilities and functions of the Services meet its requirements.

6.7 Dynamatix and its affiliates and suppliers disclaim any representations or warranties that the Customer's use of the services will satisfy or ensure compliance with any legal obligations or laws or regulations or are fit for a particular purpose. The Customer is solely responsible for ensuring that the use of the services is in accordance with applicable law or regulations or suitable for its purpose.

7 Limits of Liability

7.1 Notwithstanding anything to the contrary in this Agreement, neither Dynamatix nor the Customer shall be liable to the other for any of the following (whether or not the party being claimed against was advised of, or knew of, the possibility of such losses) whether arising from negligence, breach of contract or otherwise:

a) any indirect, special or consequential losses;
b) any loss or theft or corruption of data, or loss of business, revenue, goodwill, use, or anticipated savings;
c) any damage suffered by the other party as a result of an action brought by a third party arising from any use, or inability to use the Services or from any breach of this Agreement.

7.2 The entire liability of Dynamatix and its affiliates and suppliers

for all matters or claims relating to this Agreement shall be limited to the amount paid by the Customer for the Services during the three (3) months prior to such claim(s).

7.3 Except as expressly provided otherwise by these terms and conditions or as otherwise expressly agreed in writing between the parties, all other representations, conditions, warranties and other terms are excluded (including any statutory implied terms as to satisfactory quality, fitness for purpose and conformance with description) save to the extent that the same are not capable of exclusion at law.

7.4 Dynamatix's Service Fees are determined on the basis of the warranties as stated in Clause 6 and the limits of liability as stated in this Clause 7.

8. Copyright and Proprietary Rights

8.1 The Copyright and all other intellectual property rights in the Service, Software, the Documentation and all materials and information which has, or will come into the possession or knowledge of the Customer in connection with this Agreement, or performance thereof, remains the property of Dynamatix or its suppliers and consists of confidential and proprietary data whose disclosure to or use by third parties may be damaging.

8.2 Where any source code is included in the Software it is for the use of Dynamatix only and the Customer shall have no right of access to it and shall not allow any party other than Dynamatix to have access to, or copy, or reproduce it in any form.

8.3 Dynamatix and its suppliers retain all intellectual property rights, interests and title in and over their own products and systems (including, without limit, the Services and Software) and all trade secrets, copyright, patent rights ideas and any other intellectual property rights in relation thereto remain the exclusive property of Dynamatix or its licensors

8.4 The Software and Documentation is the confidential proprietary information of Dynamatix or its licensor. The Customer shall treat the Software as confidential information of Dynamatix and its licensors.

9. Termination

Dynamatix may terminate the Customer's access to the Services at any time upon written notice to the Customer if the Customer fails to pay any fees or charges due for 14 days after the due date for payment.

Customer may terminate the Services after the Initial Service Term by providing a notice of one month.

10. Changes to this Agreement

Dynamatix may modify this Agreement and any of the terms of this Agreement upon reasonable notice to the Customer, and the changes will be effective when we notify the Customer by email or other means. The continued use of the Services by the Customer after Dynamatix notifies it of any changes, indicates their agreement to the changes.

11. Governing Law

This Agreement and the ensuing relationship between Dynamatix and Customer shall be construed in accordance with, and governed by, the English law and the courts of England shall have exclusive jurisdiction.

If any provision of this Agreement is to be held unenforceable, such holding will not affect the validity of the other provisions hereof. Failure of a party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

12. Relationship of Parties

The parties are independent contractors, and not agents, employees or joint ventures of one another, and do not have any authority to bind the other party by contract or otherwise to any obligation. Neither party will represent to the contrary, either expressly, implicitly, by appearance or otherwise. Nothing in this Agreement shall confer on any third party any right or benefit under the Contracts (Rights of Third Parties) Act 1999.

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