



Terms and Conditions for Software and Services Provided as SaaS

This is a contract entered into by **MIT Dynamic Solutions Limited** a private company incorporated in United Kingdom Company number 6034368 and having its registered office at Peel Fold, Mill Lane, Henley on Thames, Oxfordshire RG9 4HB

("MIT") and **<XXXX>** ("the Client") and having its registered office at **<XXXXXXXXXXXXXXXX>** on this date, **<Month Name, Day Number, Year>**.

1. Definitions:

"Agreement" means this Agreement together with the Schedules at the end of this Agreement.

"Commencement Date" means the date when this Agreement will start, being [the date of this Agreement, as set out at the top of this page]

"Services" means the services to be provided by MIT to the Client under this Agreement from time to time, being such services of the nature set out in Schedule 1, and amended from time to time in accordance with the provisions of this Agreement. For the avoidance of doubt, the "Services" include the production of the Materials.

Unless the context requires a different interpretation (or this Agreement expressly provides otherwise), the following rules should be used to interpret this Agreement:

- any reference to a provision of a statute includes references to that provision as amended, extended or replaced by any other provision regardless of whether the other provision became law before or after this Agreement;
- words used in the singular tense should be interpreted to include the plural tense and vice versa. Words which refer to one gender should be interpreted to include other genders;
- a reference to a "Clause" is to the relevant clause of this Agreement;
- any use of the word "including" will not be limited by the words that follow;
- the headings in this Agreement do not affect its interpretation; and
- in the event of any conflict or inconsistency between them, the terms of the main body of this Agreement will prevail over the terms of the Schedules, and the relevant provisions of the Schedule should be construed accordingly. The parties acknowledge and agree that, notwithstanding the terms of any purchase order or other documents (even where such

purchase order or other documents are expressed to apply to the provision of services), the terms of this Agreement will apply to the provision of the Services.

“Software” means the programs, software and services, including any of its individual components and supporting documentation provided under this Agreement.

“License” means the restricted licence granted to the client for the use of the Software during the term of this Agreement and as set out in this Agreement. The nature of the Licence will vary with the selected operating mode of the Software

"Confidential Information" means information that is designated as 'confidential' or which by its nature is clearly confidential. Confidential Information includes (without limitation) any information concerning the technology, technical processes, business processes, procedures, personal data, business affairs, financial affairs and finance of MIT or the Client, their customers, employees and suppliers. Confidential Information may take the form of:

a) documents, technical specifications, unpublished patent specifications, data, drawings, plans, processes, photographs, databases, computer software in disk, cassette, tape or electronic form and data storage or memory in, and items of, computer hardware; or

b) oral descriptions, demonstrations or observations;

"Intellectual Property Rights" means any of these rights, namely:

a) patents, trademarks, rights in design, get-up, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them), and where applicable any goodwill therein;

and

b) rights in inventions, know-how, trade secrets and other confidential information; and

c) any other intellectual property rights which may exist at any time in any part of the world;

"Materials" means all goods, records, reports, documents, papers, other materials and deliverables (whether in documentary, electronic or other form) produced by or on behalf of MIT for the Client as part of the Services including such Materials as are described in Schedule 1;

2. The Services

This Agreement will come into effect on the Commencement Date and will continue, subject to the terms of this Agreement,

The Client hereby engages MIT to provide Services described herein under the **Services document**. MIT hereby agrees to provide the Client with such Services in exchange for consideration described therein.

3. Scope of Works

- a) MIT will provide the Services set out the **Services document**
- b) on the terms and subject to the conditions set out in this Agreement; and
- c) on and subject to any Special Terms and Conditions set out within the same **Services document**

4. Fees

4.1 The Client shall pay MIT for the Services delivered as outlined in the **Services document** and according to the **Pricing and Payment document** within 30 calendar days of the date on any invoice for services rendered from MIT. For the avoidance of any doubt, MIT will invoice throughout the term of this agreement [monthly on or nearest to <date> of each month.]

4.2 Should the Client fail to pay MIT the full amount specified in any invoice within 30 calendar days of the invoice's date, interest of 10% percent per annum shall accrue from following the invoice's date.

4.3 MIT will be entitled to charge the Client for any reasonable travel and accommodation expenses necessarily incurred by MIT's Staff while providing the Services.

5. Cancellation Terms

5.1 The term of this Agreement shall commence as of the Commencement Date, and shall continue in effect for a period set out in the **Services document** ("Initial Term"), which shall be thereafter automatically extended for further [one (1) year] terms (each a "Renewal Term"), unless or until terminated in accordance with the provisions specified in this Clause 5. The Initial Term and each Renewal Term shall be collectively referred to herein as the "Term".

5.2 Either party may terminate this Agreement by providing the other party with ninety (90) days written notice prior to the end of the current Term.

5.3 The following shall be considered acts of default of any party:

(a) failure to perform a material obligation pursuant to this Agreement which continues for more than

fifteen (15) days after the other party gives written notice demanding that the failure be remedied, or where the failure cannot be remedied within fifteen (15) days, where the party does not proceed promptly to remedy the failure;

(b) voluntary assignment in bankruptcy or proposal by a party to its creditors to take similar action;

(c) any bankruptcy, reorganization, proposal insolvency receivership or similar proceeding involving

essentially all of a party's property.

Where there is an act of default, the other party may terminate this Agreement by written notice to the defaulting party. The election to terminate shall not be construed as an election or waiver of any remedy. The failure to object to an act of default shall not be deemed a waiver of that right to object.

6. Intellectual Property Rights and Confidential Information

6.1 Nothing in this Agreement has the effect of assigning or transferring any Intellectual Property Rights in and to materials, procedures, concepts or ideas developed by either party before the Commencement Date of this Agreement and subsequently incorporated into anything produced by either party in the course of this agreement.

6.2 Subject to Clause 6.1 all Intellectual Property Rights, in and to the Materials, will be the property of MIT.

6.3 Both parties will (i) treat as confidential, (ii) use only for the purposes of the relevant Project, and (iii) will protect Confidential Information and will not disclose to any party other than as expressly permitted by this Clause 6.3, any Confidential Information of either party provided to or otherwise obtained under or in connection with this Agreement. MIT will be permitted to disclose any such Confidential Information only to those members of its Staff who require to know it in order to perform their functions in relation to the relevant Project, and provided that they are bound to hold the same in confidence. MIT will at its expense take all appropriate steps to enforce any such duty of confidence, insofar as such enforcement becomes necessary for protection of any of the Client's Confidential Information.

6.4 The confidentiality obligations in Clause 6.3:

a) do not apply to any information which MIT can show by reference to documentary or other evidence was already public knowledge at the time of its receipt by MIT under this Agreement, or which becomes so at a later date, in either case otherwise than as a result of a breach by MIT of Clause 6.3; and

b) do not prohibit the disclosure by MIT of any Confidential Information of the Client if and to the extent that MIT is legally required to make any such disclosure (whether by a court of competent jurisdiction or otherwise (but not solely in terms of any contractual obligation on the part of MIT) provided that MIT gives the Client notice that it has been asked to make such disclosure, in advance of making it.

6.5 The parties note that for the purposes of this clause 6 the term MIT includes also MIT Dynamic Technologies Limited, a private company incorporated in United Kingdom (Company number 04139373) and having its registered office at The Barn, Coptfold Hall Farm, Writtle Road, Ingatestone, Essex, CM4 0EL ('MITDT'). MITDT is the owner of the Software and may carry out some of the Services to be provided on behalf of MIT under this Agreement. MIT shall procure that MITDT is bound by all obligations of MIT arising under this Agreement.

7. Grant of Licence and use of the Software

7.1 Subject to the payment of the applicable fees, and subject to the terms and conditions of this Agreement, MIT hereby grants to the client while this Agreement continues a non-exclusive, royalty free, worldwide enterprise sub-licence right to use the specified version of the Software, as specified in Schedule 1, and accompanying documentation in order to perform a Scan or series of Scans solely for the client's business purposes.

7.2 The grant of licence as defined in this clause 7.1 does not represent a transfer of ownership of the Software to the client which shall always remain with MIT.

7.3 All licensing rights not expressly granted to the client under this Agreement are reserved strictly to MIT.

8. Client's Undertakings

8.1 The client agrees that it will not copy, modify, reproduce or use the Software in any way except as provided for herein and the client agrees to notify MIT promptly of any circumstance relating to any unauthorised use or copying of the Software by any person or entity not authorised to do so.

8.2 The client agrees not to reverse engineer, disassemble, reverse translate or in any way decode the Software or copy it or any part of it to derive any source code. You agree that the Software contains valuable trade secrets and confidential information owned by MIT or its licensors, including but not limited to the functionality, appearance and content of the Software screens, the method and pattern of user interaction with the Software and the content of the Software documentation. The Software source code and such valuable trade secrets and confidential information are not licensed to you under this Agreement.

8.3 The client agrees not to create any derivative works based on the Software or embed the Software in any other product.

9. Non-Solicitation

9.1 The parties agree that neither of them will either on their own account or in partnership or association with any other party, and whether directly or indirectly during or for a period of six months following the termination of this Agreement, solicit or entice away or attempt to solicit or entice away or authorise the taking of any such action by any other party, any director or any employee of the other party, or any existing customer of the client made known to MIT by the client who has been directly involved in providing any of the Services, at any time during the immediately

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preceding six months (or the six months immediately prior to termination of this Agreement, if that period is earlier).

10. Limitation of Liability

10.1 Nothing in this Agreement shall exclude or limit either Party's liability for (i) fraudulent misrepresentation (ii) fraud or other criminal act, (iii) personal injury or death caused by the negligence of the Party or its employees in connection with the performance of their duties hereunder, or (iv) any other liability that cannot be excluded by law.

10.2 Subject to clause 10.1 above, each Party's liability in respect of any claim arising from or in connection with this Agreement, whether in contract, tort or any other form of claim, shall be for direct loss and damages only and shall be limited to an amount equal to 150% of the total fees paid and payable by either Party to the other during each of the previous twelve (12) months immediately prior to the date of any action arising from any breach of this Agreement.

10.3 Each Party hereby excludes all liability for all consequential, indirect and/or special or similar losses.

10.4 Neither Party intends any third party to have the benefit of any provision of this Agreement.

11. Warranty

11. The client accepts responsibility for the selection of the Software to meet the client requirements. MIT does not warrant the suitability or fitness for purpose of the Software for purposes beyond the

descriptions, illustrations or specifications contained in the MIT publicity material and product documents or for other purposes that have not been stated expressly in this Agreement.

11.2 MIT cannot guarantee the Software to be error free or that the use of the Software will be uninterrupted. However, MIT undertakes to use reasonable endeavours promptly to resolve errors following their reporting to MIT customer services in accordance with the established reporting procedures. Provided always that MIT responds to such requests in a timely manner the existence of any such errors or interruptions shall not constitute a breach of this Agreement by MIT.

11.3 Any warranties provided by MIT under this Agreement shall not apply if you (a) make or cause to be made any modifications to the Software without the consent of MIT, (b) use the Software in a manner for which it was not intended, or (c) use the Software other than as permitted under this Agreement.

- 11.4 MIT warrants to the client that no part of the Software, the documentation or the MIT promotional materials infringes the Intellectual Property Rights of any third party.

12. Force Majeure

Neither Party shall be liable to the other for delay or failure to perform its obligations under this Agreement resulting from war, armed conflict, civil disturbance, act of God, fire, explosion, accident, flood, industrial dispute, or other cause beyond the reasonable control of either Party.

13. Security of data

The client is responsible for and must take all necessary security and storage backup measures to ensure the retention of scan data on its own hardware. MIT shall have no liability to the client for the integrity of data stored on the client facilities.

MIT is ISO9001 and ISO27001 accredited and will ensure that all undertakings with the client conform to its Quality Assurance and Security System frameworks. The client agrees to conform to the same during the engagement of the contract, and each party will advise the other if there is a material breach of security that affects the engagement.

14. General

14.1 Both MIT and the Client will nominate in writing a person to act as its representative under this Agreement. These representatives will be responsible for providing any information which the other party may need, and reasonably require, to perform its obligations. The parties will ensure that their representatives will meet at least once a month, to discuss the progress of the Services provided under this Agreement.

14.2 This Agreement contains all of the terms of the agreement between the parties relating to the matters covered in this Agreement and supersedes all prior agreements, arrangements and undertakings between the parties relating to its subject matter. Additions or changes to this Agreement will only be binding upon the parties where they are written to amend this Agreement and are signed by authorised representatives of each of the parties.

14.3 If and to the extent that any of the terms and conditions of this agreement shall be determined to be invalid, unlawful or unenforceable, such term or condition shall to that extent be deleted from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law. In addition, the parties will use reasonable efforts to replace the deleted Clause (or part) with a valid replacement provision which is as close as possible to the one that has been deleted.

14.4 No delay, neglect or forbearance on the part of either party in enforcing any term or condition of this agreement shall constitute a waiver or in any way prejudice any right of that party under or in connection with this Agreement. In addition, if a party waives its right on one occasion this does not mean that the party has lost (or waived) these rights on a later occasion.

14.5 Where any notice or other communication is to be made under this Agreement, it must be in writing. Notices or communications may be left at, or sent by first class post or recorded delivery post to, the address of the party given at the start of this Agreement, or any other address they may nominate in writing from time to time provided they are also left with or sent by first class or recorded delivery post in accordance with this Clause within 24 hours of being sent by email:

14.6 Any notice or communication left at an address of a party in accordance with this Clause will be received at the time of delivery. In other cases, any notice or communication will be treated as having been received by the person to whom it is addressed two Business Days

following the date of despatch of the notice by post or where the notice is given by fax, simultaneously on completion of transmission. However, where in any case, these rules would result in a notice or communication being treated as being received on a day that is not a Business Day, it will be treated as having been received on the next Business Day afterwards.

15. Change in Terms and Conditions

MIT may change the terms and conditions of this Agreement upon provision of 30 days written notice of the proposed changes. Such notice shall be provided in accordance with clause 14 above. If, at the end of the notice period, the client is unable to agree to the proposed changes then the client shall be entitled to terminate forthwith their obligations under this Agreement.

16. Disputes and Law

16.1 If a dispute arises between the parties, in connection with this Agreement, it will first be referred to the parties' representatives nominated under Clause 14.1. If they cannot resolve it within a maximum of ten (10) Business Days after it has been referred to them, the dispute will be escalated to the managing director of MIT and the Client Director, (or anyone appointed by them to deal with the dispute) for resolution. In the event that they are not able to resolve the matter, Clause 16.2 shall apply (and for the avoidance of doubt each party retains the ability to commence proceedings whilst escalating a dispute in accordance with this Clause 16.1).

16.2 This Agreement and any non-contractual obligation arising out of or in connection with this Agreement and any Dispute shall be governed by the law of England and Wales and the courts of England and Wales will have the authority to settle any Dispute.

IN WITNESS WHEREOF the parties or their duly authorised representatives have executed this Agreement and the following 2 Schedules on the day and year first above written.

Authorised Signatory

Signed for and on behalf of MIT DYNAMIC SOLUTIONS LTD

by(Signature)

name(block capitals)

title

on.....

Signed for and on behalf of the Client

by(Signature)

name(block capitals)

title

on.....