



Bigmate Monitoring Services Pty Ltd
ABN 70 074 019 926

Agreement
Standard Terms and Conditions

**THESE ARE THE STANDARD TERMS AND
CONDITIONS OF THE AGREEMENT**

**BETWEEN: BIGMATE MONITORING SERVICES
PTY LTD** ACN 074 019 926
of Level 12, 100 Edward Street, Brisbane in
the State of Queensland ("the Company")

**AND: The Customer set out in the Service
Agreement** ("the Customer")

1. DEFINITIONS AND INTERPRETATION

1.1 **"Agreement"** means the Service Agreement and these Standard Terms and Conditions;

"Annual Fee" means the amount set out in the Service Agreement;

"BMS" means the Bigmate Monitoring Software offered by the Company, and includes but is not limited to:

- (a) Video analytics software;
- (b) Warny proximity awareness solution;
- (c) Hyspec- real time quality analysis
- (d) Modular Integration Middleware (M.I.M);
- (e) Uniform Coordinate System (UCS);
- (f) Alert Validation Module (Validator);
- (g) Heads Up Display (HUD);
- (h) Advanced reporting modules;
- (i) Custom built software ;
- (j) Co-developed software, including trials, proof of concepts and pre-production engagement;
- (k) Any software to be supplied under this Agreement including any enhancements, upgrades or modifications to that software;
- (l) Any improvements to the BMS that are initiated by the Company;
- (m) Any digital information, illustration, animation, flash file, audio, photographic images and/or other material, together with any other accompanying material made available by Company for the purposes of this Agreement, and

together with any software or products developed as a consequence of the services offered under this Agreement and the Service Agreement.

"Business Day" means a day on which banks are

open for general banking business in Queensland;

"Commencement Date" means the commencement date specified in the Service Agreement;

"Customer" means the Customer set out in the Service Agreement;

"Default Rate" means the National Australia Bank indicator base rate from time to time plus a margin of 4%;

"Initial Term" means the initial term set out in the Service Agreement;

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity, any industrial, commercial, scientific, literary or artistic fields.

"Report" means the report/s generated by the Company from the data and available through the BMS;

"Service Agreement" means the Agreement which specifies the particular arrangement between the Company and the Customer regarding the use and the dissemination of the data to the Customer;

"Term" means the initial term and any extension or renewal thereof as set out in the Service Agreement;

1.2 In this Agreement:-

- (a) the singular includes the plural and vice versa;
- (b) "person" includes a firm, body corporate, unincorporated association or any other body or entity;
- (c) a reference to either party includes that party's successors and permitted assigns;
- (d) a reference to a clause or Service Agreement is a reference to a clause or the Service Agreement of this Agreement; and
- (e) headings are inserted for convenience only and do not affect interpretation.

2. TERM

2.1 If this Agreement is for a fixed period, this Agreement will commence on the Commencement Date and continue for the Initial Term.

2.2 In the event the Customer requires this Agreement to cease at the expiration of the Initial Term the Customer must notify the Company by giving to the Company at least one (1) months written notice prior to the expiration of the Initial Term.

2.3 If notice pursuant to clause 15.1 has not been given by the Customer to the Company prior to the expiration of the Initial Term, this Agreement will

continue past the expiration of the Initial Term as a periodic month to month Agreement.

- 2.4 In the event this Agreement continues past the expiration of the Initial Term pursuant to clause 15.3, the Customer or the Company may terminate this Agreement after the expiration of the Initial Term by giving to the other party at least one (1) months written notice of termination.
- 2.5 If this Agreement is a periodic month to month arrangement this Agreement will commence on the Commencement Date and continue until terminated by either the Customer or the Company giving at least one (1) months written notice of termination to the other party.

3. ANNUAL FEE

- 3.1 The Annual Fee must be paid to the Company in accordance with the terms of the Service Agreement.

4. INCREASE IN ANNUAL FEE

- 4.1 In the event the Agreement continues past the Initial Term for a fixed period Agreement and at any time in the case of a periodic Agreement the Company may increase the Annual Fee payable by the Customer by giving to the Customer one (1) months written notice of any such increase.

5. COMMUNICATION, LABOUR, TRAVEL AND OTHER VARIABLE COSTS

- 5.1 In addition to the Annual Fee and all other monies payable pursuant to this Agreement the Customer must reimburse the Company for all Variable Costs incurred by the Company in the performance of this Agreement.
- 5.2 The Variable Costs payable by the Customer at the date of this Agreement are set out in the Service Agreement.

6. ACCESS TO BMS

- 6.1 The Company grants to the Customer a non-exclusive, non-transferable licence to access and use the BMS, the Report/s and the data for the Term.
- 6.2 The Company will during the Term provide the Customer with access to the BMS to obtain such Report/s as will be agreed by the Company and the Customer prior to the Commencement Date.
- 6.3 The Company does not warrant that the BMS and/or the Report/s will be free of inaccuracies, defects or errors;
- 6.4 No warranties are given by the Company in relation to the Report/s and the data (including the accuracy, reliability, completeness or suitability) and

no liabilities accepted (including without limitation, liability and negligence) for any loss, damage or costs (including consequential damage) relating to the use of the data by the Customer.

- 6.5 The Customer, its agents and employees must not alter, tamper or modify the BMS in any way and indemnifies the Company for any loss suffered by the Company as a result.
- 6.6 The Customer will access the Reports through the BMS and the timing of the provision of the agreed Reports will be agreed between the parties prior to the Commencement Date.
- 6.7 The Company will not be responsible for any loss or damage suffered by the Customer as a result of the data contained and/or not contained in the Report and/or, the use by the Customer of any such data.

7. COMPANY'S INTELLECTUAL PROPERTY

- 7.1 The Customer acknowledges that the templates, data and Report structures and the BMS are and will at all times be the property of the Company or its licensors.
- 7.2 All intellectual property rights in the BMS and the data it contains are retained by the Company or its licensors and nothing in this Agreement will operate to transfer the copyright or intellectual property rights in, the BMS or the data to the Customer.
- 7.3 During the term the Customer will:-
- (a) only use the BMS for purposes associated with this agreement;
 - (b) not use the BMS for any activity which is obscene, indecent, offensive or defamatory;
 - (c) refrain from tampering with, hindering the operation of or making unauthorised modifications to the BMS;
 - (d) refrain from introducing any virus to or from the BMS;
 - (e) refrain from damaging or modifying the BMS;
 - (f) ensure that it has a proper and sufficient and secure password protected connection;
 - (g) keep all passwords or log-in identifications required to access the BMS secure and confidential;
- 7.4 The Customer acknowledges that it is responsible for ensuring that its system is compatible with and able to translate and display all information and reports available from the BMS.

8. OVERDUE PAYMENTS

- 8.1 The Customer must pay to the Company on demand interest at the Default Rate on any amount due to the Company but unpaid.

- 8.2 In the event any invoices remain unpaid and require the use of debt collection or a mercantile agency, the Customer agrees to indemnify the Company of all costs associated with this collection.

9. CONFIDENTIALITY

- 9.1 Each party must keep confidential all information about each other which is in its nature confidential and which comes into each party's possession.
- 9.2 No party is permitted to disclose any confidential information about the other without the consent of the other unless:
- (a) that information has become publicly available; or
 - (b) disclosure is required by law.

10. APPROPRIATION OF MONIES

- 10.1 The Company may apply any money received from the Customer, or from anyone else on the Customer's behalf, to any money owing by the Customer whether in connection with this Agreement or otherwise and may disregard any directions by the Customer as to how any monies are to be applied.

11. ENTIRE AGREEMENT

- 11.1 The parties acknowledge and agree that these Terms and Conditions and the Service Agreements form the entire Agreement between the parties.
- 11.2 No variation of this Agreement will be effective unless it is in writing and is signed by or on behalf of both parties to this Agreement.

12. SEVERANCE

- 12.1 If any provision in this Agreement is or becomes illegal, invalid or unenforceable, such provision will be severed and the remaining provisions will continue unaffected.

13. GOVERNING LAW

- 13.1 This Agreement is governed by the laws in force in the State of Queensland, Australia. Both parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

14. WAIVER

- 14.1 No waiver by the Company of any default, breach or repudiation by the Customer of this Agreement will affect the Company's rights in respect of any further or continuing default, breach or repudiation of this Agreement.

15. NOTICES

- 15.1 Any notice to be given must be addressed as set out in this Agreement or as last notified by each party to the other.
- 15.2 Notices may be hand delivered, sent by prepaid mail or by facsimile or email.
- 15.3 Notices sent:-
- 15.4 by prepaid mail will be taken to be received on the third Business Day after posting; and
 - 15.5 by facsimile will be taken to be received on production of a transmission report from the transmitting machine indicating a successful transmission of the facsimile; and
 - 15.6 by email will be taken to be received when the email enters the recipient's mail server.

16. TRUSTEE PROVISIONS

- 16.1 In the event the Customer enters into this Agreement as trustee of any trust the following covenants will have effect (whether or not the Company has notice of the said trust): -
- 16.2 the Customer will be personally liable for the performance of all covenants in this Agreement.
- 16.3 The Customer has full complete and valid authority pursuant to the trust deed to enter into this Agreement.
- 16.4 The Customer hereby charges all rights of indemnity which it has or will have from time to time against the trust fund or trust property and covenants that such rights of indemnity have not been excluded by the provisions of the trust or by any breach of trust or otherwise and that it will not release or otherwise prejudice such rights of indemnity.
- (a) The trustee or trustees of the trust will not be altered (save upon the death of a trustee) unless the Company is given notice of the trust and gives consent to such alteration PROVIDED THAT such consent will not be unreasonably withheld.
 - (b) Any breach of trust by the trustee will constitute a breach of this Agreement entitling the Company to exercise all such rights and remedies upon default as are contained in this Agreement.
 - (c) The Customer has secured advice from solicitors familiar with the terms of the trust that such terms create no impediment to the granting of the covenants in this clause nor create any reason why the covenants in this clause should be ineffective.

17. DISPUTES

- 17.1 In the event that there is any dispute or difference between the parties under this Agreement about the operation or interpretation of this Agreement, or liabilities of any nature whatsoever, the parties must attempt to resolve the dispute via mediation within 10 business days of the date that the dispute arose, and that the parties agree to equally share the costs of mediation.
- 17.2 If the parties cannot agree on who should be appointed as a mediator, then the parties hereby agree to nominate the President of the Queensland Bar Association to appoint a barrister of not less than 5 years standing to act as a mediator.
- 17.3 In the event that the dispute is not resolved via mediation, then the parties agree to submit the dispute or difference between the parties to arbitration, rather than to courts, in accordance with, and subject to, the rules of the conduct of commercial arbitrations at the Institute of Arbitrators and Mediators, Australia. During such arbitration, both parties may be represented by duly qualified legal practitioners.
- 17.4 Notwithstanding the foregoing, either party may commence court proceedings to seek any urgent injunctive relief that either party may consider fit.

18. INDEMNITIES

- 18.1 The Customer agrees to use, operate and possess the BMS and the Reports at the Customer's risk. The risk passes to the Customer upon the BMS being delivered to the Customer.
- 18.2 To the full extent permitted by law, in consideration of the Customer entering into this Agreement with the Company, the Customer agrees to forever release and discharge the Company, its licensors and their directors, officers, agents and employees from all claims, complaints, causes of action and demands arising directly or indirectly out of any breakdown or defects in the BMS or operation or use of it resulting in: -
- (a) death, or any injury or financial loss or damage whatsoever and whenever caused to any person, including the Customer or its agents, directors, officers, contractors, subcontractors, or employees; and
 - (b) death, or any injury or financial loss or damage whatsoever or whenever caused to any person including the Customer, or its agents, directors, officers, contractors, subcontractors or employees as a result of the failure of any external services (including but not limited to satellite services) required to enable the Customer to use the BMS.
- 18.3 For the avoidance of any doubt, in the event the

Customer or its agents, directors, officers, contractors, subcontractors or employees suffer any injury or death, or financial loss and damage as a consequence of or incidental to a breakdown of, or defect in, the use, operation, repair, maintenance or storage of the BMS (whether occasioned by the negligence of or breach of any other liabilities at law generally by the Company, its licensors, directors, officers, agents, contractors, subcontractors, employees or otherwise), the Customer assumes full liability for any such loss and damage.

- 18.4 The Customer hereby indemnifies and will keep indemnified, protected, saved and harmless the Company and its agents, directors, officers, contractors, subcontractors and employees from and against any and all actions, claims, proceedings, suits, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees incurred by the Company on an indemnity basis) and of whatsoever kind and nature:-
- (a) arising out of or alleged to arise out of the delivery, selection, purchase, acceptance or rejection, ownership, possession, use (including by reason of the use or incorporation of any invention resulting in infringements of patents), repair, maintenance, storage, or operation of the BMS, and by whomsoever used or operated; or
 - (b) arising out of any claim for patent, trademark or copyright infringement, strict liability, or for any other reason being made against the Company in connection with the BMS or its operation.
- 18.5 The indemnities contained in this clause will continue to have full force and effect notwithstanding the repudiation, or termination of this Agreement whether by expiration of time or otherwise as to any act or omission relating to the BMS occurring during the continuance of this Agreement which at any time is claimed to have created a cause of action against the Company or assumption of liability by the Customer.

19. EXCLUSION OF WARRANTIES

- 19.1 To the full extent permitted by law, all express and implied terms, conditions and warranties (other than those set out in this Agreement) are excluded.
- 19.2 If the Customer is a "Consumer" for the purposes of the Australian Consumer Law then liability for breach of a guarantee conferred by the Australian Consumer Law is limited at the company's option to: -
- (a) in the case of goods, to any one of the following as determined by the Company;

- (i) the replacement of the goods or the supply of equivalent goods; or
- (ii) the repair of the goods; or
- (iii) the payment of the cost of replacing the goods or equivalent goods; or
- (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services, to any one of the following as determined by the Company:-
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

20. COSTS, DUTIES, CHARGES AND GST

20.1 The Customer must pay or reimburse the Company for:-

- (a) all taxes (other than income tax), stamp duties and other duties payable in connection with this Agreement or any payment, receipt or other transaction arising under this Agreement; and
- (b) any costs or expenses (including legal costs) reasonably incurred by the Company in connection with the protection of the BMS or the enforcement of the Company's rights under this Agreement.

21. GST

21.1 Without limiting clause 23.1 the Customer must, in addition to the Annual Fee or other money payable under this Agreement, pay to the Company the amount of any goods and services tax payable by the Company in connection with the supply by the Company pursuant to this Agreement or any payment, receipt or other transaction arising under this Agreement. The Company requires the Customer to pay any such amounts with the Annual Fee installments.

22. AGENT

22.1 The Customer acknowledges and agrees that the Company may authorise an agent to do anything which the Company may do pursuant to this Agreement.