

MIST Global End User Agreement

These Terms of Service ("**Terms**") constitute a binding legal agreement between MIST Global LLC, a Washington limited liability company ("MIST Global") and Customer and governs Customer's access to and use of the Online Services and MIST Global xMati as described below. Customer's access to and use of the Online Services and MIST Global xMati is conditioned on Customer's compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations.

CUSTOMER ACKNOWLEDGES AND AGREES THAT BY CLICKING ON THE "**I ACCEPT**" BUTTON OR BY ACCESSING OR USING ONLINE SERVICES, CUSTOMER WARRANTS AND REPRESENTS THAT HE OR SHE IS OF LEGAL AGE AND LEGALLY COMPETENT AND AUTHORIZED TO ENTER INTO AND/OR APPROVE THESE TERMS ON BEHALF OF THE PARTY FOR WHOM HE OR SHE PURPORTS TO SIGN, AND AGREES TO INDEMNIFY AND HOLD HARMLESS MIST GLOBAL AGAINST ANY CLAIM, SUIT OR DEMAND, INCLUDING LITIGATION COSTS, ATTORNEY'S FEES AND OTHER NECESSARY EXPENSES, IN WHICH IT IS ASSERTED THAT HE OR SHE WAS NOT COMPETENT AND/OR AUTHORIZED TO APPROVE AND/OR EXECUTE THESE TERMS AND IS INDICATING THAT CUSTOMER HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THESE TERMS. IF CUSTOMER DOES NOT AGREE TO THESE TERMS, THEN CUSTOMER HAS NO RIGHT TO ACCESS OR USE THE ONLINE SERVICES AND MIST GLOBAL XMATI.

1. DEFINITIONS

"Customer" means an individual person or business entity that gains access to MIST Global's Online Services, but only for the purpose to ensure that the Terms apply and bind each and every individual person or business entity that gains access to MIST Global's Online Services.

"Customer Agreement" means the active Customer Agreement entered into between Customer and MIST Global to Customer and Customer has received the Software.

"Customer Content" means all electronic data, information, or other content submitted by Customer to MIST Global.

"MIST Global xMati" means MIST Global's software product called xMati, that integrates and will be downloaded from MIST Global Online Services and MIST Global xMati shall be updated from MIST Global Online Services with updates and improvements to MIST Global xMati.

"Online Services" means the MIST Global xMati, MIST Global's online website located at <https://xmati.ai> (the "**MIST Global Site**"), and any services or products provided through the MIST Global Site.

2. SERVICES

2.1 Provision of Services. Subject to Customer's compliance with these Terms and the Customer Agreement, MIST Global grants Customer a non-exclusive, non-transferable, non-sublicensable license to use the Online Services with the MIST Global xMati solely for Customer's internal business purposes and in connection with its authorized use of the Online Services and the MIST Global xMati. MIST Global reserves the right to modify or enhance the Online Services, the MIST Global xMati or portions thereof, with or without notice to Customer. These Terms apply as of the date Customer first accesses the Online Services and will continue to apply notwithstanding any modifications and/or enhancements to the Online Services.

2.2 Account Registration. In order to first access or use the Services, Customer will need to activate the Online Services by registering and creating an account ("**Account**"). When creating an Account,

Customer may be required to provide certain personal information and establish a username and a password. Customer agrees to provide accurate, current and complete information about the Account. Customer is responsible for maintaining confidentiality of the password and for any activities or actions under the Account, whether or not Customer has authorized such activities or actions. MIST Global is not liable for any loss or damage arising from failure to comply with the above requirements. Customer agrees to notify MIST Global immediately if Customer has any reason to believe that the security of Customer's Account has been compromised.

2.3 License to MIST Global. By uploading, posting, submitting or otherwise transmitting Customer Content through the Online Services, customer hereby grants to MIST Global a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license to use, copy, adapt, modify, display and otherwise exploit the Customer Content through or by means of the Online Services in order to provide the Online Services.

2.4 Service Availability. MIST Global warrants that the software and the website elements for the MIST Global xMati will perform materially in accordance with the user documentation. MIST Global will use commercially reasonable efforts to make the Online Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (which MIST Global will schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond MIST Global's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving MIST Global employees), or internet service provider failures or delays.

2.5 Customer Responsibilities. Customer will (i) be responsible for maintaining its own internet and wireless connection in order to access or use the Online Services, (ii) be solely responsible for the accuracy, quality, integrity and legality of Customer Content (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Online Services, and notify MIST Global promptly of any such unauthorized access or use, and (iv) use the Online Services only in accordance with the Customer Guide and applicable laws and government regulations. Customer will not (a) sell, resell, rent or lease the Online Services, (b) use the Online Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (c) use the Online Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs, (d) interfere with or disrupt the integrity or performance of the Online Services or third-party data contained therein, or (e) attempt to gain unauthorized access to the Online Services or their related systems or networks.

2.6 Third Party Services. The Online Services may also contain links to third party websites, resources and services provided by third parties. MIST Global is not responsible or liable for: (i) the availability or accuracy of such services; or (ii) the information, products, or services available on or through such third parties. The availability of such third party services does not imply any endorsement by MIST Global. Customer is responsible for and assumes all risk arising from Customer's use or reliance of any third party services.

2.7 Privacy. All Customer Content and any personal information collected through the Services will be subject to MIST Global's Privacy Policy (which is incorporated into these Terms by reference).

3. FEES AND PAYMENT

3.1 Customer Fees. So long as Customer makes all the payments required by the Customer Agreement and is currently under and bound by a valid Customer Agreement from MIST Global the Online Services will be provided free of charge. Customer will contact MIST Global for more information regarding such subscriptions.

3.2 Additional Functionalities. From time to time, MIST Global may offer additional software features. These additional features will be charged for and priced separately, and if licensed by Customer, will be subject to the terms and conditions of these Terms.

3.3 Taxes. Customer shall, in addition to the other amounts payable under these Terms, pay all applicable customs, duties, sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by these Terms, excluding only taxes based on MIST Global's net income.

4. PROPRIETARY RIGHTS

4.1 Definition of Intellectual Property. "Intellectual Property" shall mean any and all of the following and any and all rights arising out of or associated therewith: all United States of America, foreign, and international patents (including all utility patents and models and design patents) and patent applications (including all provisional, reexamination and reissue applications, and all divisionals, continuations, and continuations-in-part (including of any other patent applications)); all inventions (whether patentable or not) and invention disclosures related thereto; all proprietary information, software and technology, including: trade secrets, know-how, software code, technical data, customer lists, databases and data collections, product and manufacturing specifications, and all documentation relating to any of the foregoing; all Copyrights, copyright registrations, and applications therefor, and all other rights corresponding thereto throughout the world; all industrial designs and any registrations and applications therefor throughout the world; all Internet uniform resource locators, domain names, trade names, logos, slogans, designs, trade dress, common law trademarks and service marks, trademark and service mark registrations, and applications therefor throughout the world and goodwill associated therewith; all moral and economic rights of authors and inventors, however denominated, throughout the world; all other tangible and intangible proprietary information owned or licensed by MIST Global, including all, and all rights therein throughout the world; all improvements to any of the foregoing (whether or not completed); and all other similar or equivalent rights to any of the foregoing anywhere in the world, including any revenue streams generated on, or from any of the foregoing, and all licenses related to any of the foregoing granted to MIST Global.

4.2 Reservation of Rights. Subject to the limited rights expressly granted hereunder, MIST Global reserves all rights, title and interest in and to the Online Services and the MIST Global xMati, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.3 Customer's Duties. Customer will use its best efforts to protect MIST Global's Intellectual Property Rights and will promptly report to MIST Global any infringement or other violation of such rights of which Customer becomes aware.

4.4 Restrictions. Customer must not misuse and must correctly attribute ownership of the MIST Global's trademark, logo and trade style ("Marks"), must be in accordance with applicable law and MIST Global's then-current trademark usage guidelines. Customer will not remove or obscure any MIST Global copyright notices or Marks on or in the Intellectual Property and the MIST Global xMati as delivered to Customer, and will not attach any additional trademarks, logos or trade designations on or to the Intellectual Property of MIST Global or the MIST Global xMati. Customer acknowledges and agrees that MIST Global owns the Marks and that any and all goodwill and other proprietary rights that are created by or that result from Customer's use of a Mark hereunder inure solely to the benefit of MIST Global. Customer will at no time contest or aid in contesting the validity or ownership of any Mark or take any action in derogation of MIST Global's rights therein, including, without limitation, applying to register any trademark, trade name or other designation that is confusingly similar to any Mark.

Customer will not (i) permit any third party to access the Online Services except as permitted herein, (ii) create derivative works based on the Online Services, (iii) copy, frame or mirror any part or content of the

Online Services, other than copying or framing on Customer's own intranets or otherwise for its own internal business purposes, or (iv) access the Online Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Online Services.

Customer agrees that except as may be agreed upon in writing by an authorized representative of MIST Global, at no time and under no circumstance shall Customer, or shall Customer cause or permit a third party to, reverse engineer, decompile or disassemble the Online Services and the MIST Global xMati, or to attempt to create new works or derivative works based upon the Online Services and the MIST Global xMati.

4.5 Customer expressly recognizes that the Online Services and the MIST Global xMati possess a special, unique and extraordinary character, which makes difficult the assessment of monetary damages, which MIST Global would sustain by unauthorized use. Customer expressly recognizes and agrees that an irreparable injury would be caused to MIST Global by unauthorized or improper use and agrees that preliminary and permanent injunctive and other equitable relief (including but not limited to attorneys' fees) would be appropriate in the event of a breach of this section by Customer, provided that such remedy shall not be exclusive of legal remedies otherwise available.

4.6 Ownership of Customer Content. As between MIST Global and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Content.

4.7 Suggestions. MIST Global encourages and welcomes Customer feedback and input regarding the Online Services or the MIST Global xMati and such communications can be sent to support@xmati.ai. MIST Global will have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Online Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Online Services or MIST Global xMati.

5. CONFIDENTIALITY

5.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer will include Customer Content; Confidential Information of MIST Global will include the Online Services and the MIST Global xMati; and Confidential Information of each party will include the terms and conditions of these Terms as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer Content) will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

5.3 Protection of Customer Content. Without limiting the above, MIST Global will maintain

appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content. MIST Global will not (a) modify Customer Content except to provide the Online Services, (b) disclose Customer Content except as compelled by law in accordance with the "Compelled Disclosure" section below or as expressly permitted in writing by Customer, or (c) access Customer Content except to provide the Online Services and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.

5.4 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted), to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

5.5 Injunctive Relief. Each party acknowledges that breach of this Section by it would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party will be entitled to seek injunctive relief to enforce the provisions of this Section without the posting of a bond.

6. DISCLAIMER. The Online Services and the MIST Global xMati are provided to you on an "AS IS" basis. MIST GLOBAL EXPLICITLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. MIST Global makes no warranty that the Online Services or MIST Global xMati will meet your requirements or be available on an uninterrupted, secure, or error-free basis.

7. INDEMNIFICATION

7.1 Indemnification by Customer. Customer will defend MIST Global against any Claim made or brought against MIST Global by a third party alleging that the Customer Content, or Customer's use of the Online Services or the MIST Global xMati in violation of these Terms, infringes or misappropriates the intellectual property rights of a third party, or violates applicable law, and will indemnify MIST Global for any damages finally awarded against, and for reasonable attorney's fees incurred by MIST Global in connection with any such Claim; provided that MIST Global (a) promptly gives Customer written notice of the Claim, (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases MIST Global of all liability), and (c) provides to Customer all reasonable assistance, at Customer's cost.

7.2 Exclusive Remedy. This Indemnification section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this section.

8. LIMITATION OF LIABILITY

8.1 Limitation of Liability. IN NO EVENT WILL MIST GLOBAL'S LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THE CUSTOMER AGREEMENT IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS TO MIST GLOBAL AS SET FORTH ABOVE OR OTHERWISE AGREED TO BY THE PARTIES.

8.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL MIST GLOBAL HAVE ANY LIABILITY TO THE CUSTOMER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES

HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

9. TERM AND TERMINATION

9.1 Term. These Terms commences as of the first date that Customer accesses or otherwise uses Online Services and continues until expiration or termination of the Customer Agreement.

9.2 Termination for Cause. A party may terminate these Terms as set forth in the Customer Agreement.

9.3 Return of Customer Content. In the event of termination of these Terms, Customer Content that is in possession of MIST Global will be made available to Customer either from MIST Global or through a third party offsite storage provider for up to 90 days after termination. Reasonable storage charges may apply.

9.4 Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Mutual Indemnification," "Limitation of Liability," "Return of Customer Content," "Surviving Provisions" and "General" will survive any termination or expiration of these Terms.

10. GENERAL

These Terms will be governed by and construed in accordance with the laws of the State of Washington, without regard to or application of conflict of laws rules or principles. The parties hereby agree that all disputes arising out of these Terms shall be subject to the exclusive jurisdiction of and venue of the state court within King County, Washington and each party irrevocably consents to the personal and exclusive jurisdiction and venue of this court. In the event the parties become involved in litigation arising out of these Terms or the performance or interpretation thereof, the court shall award reasonable attorneys fees and costs to the party who successfully prosecutes or defends the action on the main issue. These "costs" include, without limitation, expert witness fees, investigation costs, costs of tests and analysis, travel and accommodation expenses, deposition and trial transcript costs and court costs. A court, and not a jury, will set all such fees and costs, all of which will be included in the judgment entered in such proceeding. These Terms may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld. Such consent is not required in connection with an assignment pursuant to a merger, acquisition or sale of all or substantially all of the assigning party's assets. The failure of MIST Global to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect. These Terms and MIST Global's Privacy Policy are the entire and exclusive agreement between MIST Global and Customer regarding the Online Services and the MIST Global xMati, and these Terms supersede and replace any prior agreements between MIST Global and Customer regarding the Online Services.