

Software license Terms & Conditions

1. Agreement

The terms and conditions in this Agreement will apply to any Software and Services provided to you ("**Client**") by us. We are Marker AI Limited registered in England with company number 11755262 and our registered address is 1 Holtspur Lane, Wooburn Green, High Wycombe, Buckinghamshire, United Kingdom, HP10 0AA ("**Supplier**"). Together defined as "the parties".

The provisions of this software license agreement, together with any Project & Services Agreements duly agreed between us shall form the entire agreement between us ("**the Agreement**").

2. Definitions

In this Agreement, save where provided otherwise in any relevant Project & Services agreement between the parties:

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the amounts agreed between the parties in any Project and Services Agreement;

"**Confidential Information**" means any information or data disclosed by either party to the other party, either directly or indirectly, in writing or orally or by inspection, in respect of the business, Clients, suppliers, employees, resources, financial, forecasts, designs, technologies, software or any other information which might be considered proprietary and of a confidential nature;

"**Documentation**" means the documentation for the Software produced by Supplier and delivered or made available to Client;

"**Effective Date**" means the date of execution of any Project & Services Agreements between the parties;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include but are not limited to copyright and related rights, database rights,

rights to data, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights, software designs, screens, computer logic, computer models and rights in designs);

"Minimum Term" means the period of 12 months beginning on the Effective Date or as otherwise agreed in any Project & Services Agreement;

"Software License & Services Agreement" means one or more agreements agreed between the parties and specifying the software modules to be licensed to Client; the delivery mechanisms for such software to Client; any Services to be provided to Client by Supplier;

"Services" means any training, consultancy, software development, support and maintenance services provided by Supplier to Client;

"Software" means the software identified in any Software License & Service Agreement agreed between the parties;

"Software Fault" means a fault, error or bug in the Software having an adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any Software Fault caused by or arising as a result of:

- (a) any act or omission of Client or any person authorised by Client to use, operate, install, update or manage the Software;
- (b) any use of the Software contrary to any instructions provided by Supplier to Client, howsoever such instructions are provided;
- (c) a failure of Client to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not approved in writing by Supplier;

"Term" means the term set out in any Project & Services Agreement(s);

3. Term

3.1. This Agreement shall come into force upon the Effective Date.

3.2. This Agreement shall continue in force until:

- a. Either party lawfully and properly terminates the Agreement;
- b. The Term in the relevant Projects & Services Agreement expires.

4. Supply of Software

The parties shall agree in the Project & Services Agreement the delivery mechanisms and access by Client to the Software in any Project & Services Agreement as follows:

- a. Supplier shall make the Software available either for download by Client during the Term; or
- b. Supplier shall provide access to the Software to Client twenty-four hours per day, seven days per week via written access and login details to Suppliers network and computer servers (or third-party network and computer servers that Supplier has access to).

5. License

5.1. Provided Client has paid the relevant charges, Supplier hereby grants to Client from the Effective Date and for the Term a non-exclusive license to access, use and operate the Software in accordance with and subject to the limitations and prohibitions set out and referred to in this Clause 5;

5.2. Client may not sub-license and must not purport to sub-license any parts of the Software or any materials connected with it;

5.3. The license granted by Supplier to Client in Clause 5.1 is subject to the limitations regarding the locations, identity of number of concurrent users set out in the Project & Services Agreement;

5.4. The Software may only be used by the officers and employees of Client unless otherwise agreed in writing by Supplier;

5.5. Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any license granted under this Clause 5 shall be subject to the following prohibitions:

5.6. Client must not:

- a. sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;
- b. Client must not, or attempt to, alter, edit or adapt the Software; and
- c. Client must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

5.7. Where the Software is installed on Client's computer servers, networks or other equipment owned, rented, leased or accessed by Client, Client shall be responsible for the security of copies of the Software supplied to Client under this Agreement and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.

6. No assignment of Intellectual Property Rights

Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Supplier to Client, or from Client to Supplier.

7. Charges

7.1. Client shall pay the Charges to Supplier in accordance with this Agreement.

7.2. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by Client to Supplier.

8. Payments

8.1. Supplier shall issue invoices for the Charges to Client in accordance with any relevant provisions in the Project & Services Agreement(s).

8.2. Client must pay the Charges to Supplier in accordance with the relevant payment terms and payment instructions set out in the Project & Services Agreement(s).

8.3. If Client does not pay any amount properly due to Supplier under this Agreement, Supplier may charge Client interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).

8.4. In the event that Client fails to pay any amounts properly due to Supplier within seven days of Supplier notifying Client of any overdue and unpaid amounts, Supplier may suspend:

- a. Client's access to the Software and any data held in the Software;
- b. All and any Services being provided to Client,

until such time as Client has paid all amounts owed to Supplier. For the avoidance of doubt, any such suspension shall not be deemed to be a breach of this Agreement.

9. Warranties

9.1. Supplier warrants to Client that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.2. Supplier warrants to Client that:

- a. the Software as provided will conform in all material respects with the documentation provided to Client in respect of the functions, performance, design and operation of the Software;
- b. the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs]; and
- c. the Software shall incorporate security features reflecting the requirements of good industry practice; and that the Software when used by Client in accordance with this Agreement will not breach any laws, statutes or regulations applicable under English law.

9.3. Supplier warrants to Client that the Software, when used by Client in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

9.4. If Supplier reasonably determines, or any third party alleges, that the use of the Software by Client in accordance with this Agreement infringes any person's Intellectual Property Right, Supplier may at its own cost and expense, modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights.

9.5. Client warrants to Supplier that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.6. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10. Acknowledgements and Warranty Limitations

10.1. Client acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Supplier gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

10.2. Client acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Supplier gives no warranty or representation that the Software will be entirely secure.

10.3. Client acknowledges that the Software is only designed to be compatible with software agreed between the Parties; and Supplier does not warrant or represent that the Software will be compatible with any other software.

10.4. Except to the extent expressly provided otherwise in this Agreement, Supplier does not warrant or represent that the Software or the use of the Software by Client will not give rise to any legal liability on the part of Client or any other person.

11. Limitations and exclusions of liability

11.1. Nothing in this Agreement will:

- a. limit or exclude any liability for death or personal injury resulting from negligence;
- b. limit or exclude any liability for fraud or fraudulent misrepresentation;
- c. limit any liabilities in any way that is not permitted under applicable law; or
- d. exclude any liabilities that may not be excluded under applicable law.

11.2. The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:

- a. are subject to Clause 11.1; and
- b. govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

11.3. Supplier shall not be liable to Client in respect of any loss of profits or anticipated savings.

11.4. Supplier shall not be liable to Client in respect of any loss of revenue or income.

11.5. Supplier shall not be liable to Client in respect of any loss of use or production.

11.6. Supplier shall not be liable to Client in respect of any loss of business, contracts or opportunities.

11.7. Supplier shall not be liable to Client in respect of any loss or corruption of any data, database or software.

11.8. Supplier shall not be liable to Client in respect of any special, indirect or consequential loss or damage.

12. Confidential Information

12.1. The parties acknowledge a duty during or after the Term to not disclose without the other's prior written permission any Confidential Information, of the other party, subject to clause 12.4 below.

12.2. In particular during and for a period of 24 months after proper termination of this Agreement by any means, both Parties undertake to the other to keep confidential any and all Confidential Information disclosed by the other party.

12.3. Both Parties shall use reasonable endeavours to ensure these obligations are observed by its own personnel and any third parties to whom Confidential Information has to be disclosed.

12.4. For the avoidance of doubt, the restrictions in this Clause shall not prevent:

- a. the disclosure or use of Confidential Information in the proper performance of the receiving party's duties;
- b. the disclosure of Confidential Information if required by law or regulation;
- c. the disclosure of Confidential Information which has come into the public domain other than through unauthorized disclosure.
- d. the referencing by Supplier in its marketing operations of the parties' business relationship and of Client's use of the Software

13. Data Protection

13.1. The terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Process/Processing" have the same meaning as described in any relevant and applicable Data Protection Laws.

13.2. Each party shall ensure that any personal data of any kind or type in any form supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998 ("the Act") and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR") and any variations thereto which pass into law (the "Data Protection Laws").

13.3. The Parties shall use their best endeavours to ensure that the use of and collation of any personal information is in accordance with the Act and the E-commerce (Privacy and Electronic Communications) Regulations 2003.

13.4. Client hereby appoints Supplier as Data Processor in relation to the Processing of Personal Data and the parties agree to act in accordance with their respective obligations under this Addendum.

13.5. Supplier warrants that it shall:

- a. process Personal Data (as defined in the Data Protection Laws) only in accordance with reasonable instructions from Client and in accordance with the provisions and principles of the Act and only to the extent, and in such manner, as is necessary for the provision of the Services;
- b. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure; and
- c. take reasonable steps to ensure the reliability of any of the Supplier personnel who have access to the Personal Data and ensure that all such personnel are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause.

13.6. Client warrants that it has all the necessary consents for Supplier to process the Personal Data in accordance with Client's instructions.

13.7. Client shall be responsible for all risks of loss or damage to its data except for any loss or damage caused by the negligence of Supplier. Client shall indemnify Supplier against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss damage or distress caused to that person by any breach of the provisions of the Act by the Client, its staff or agents.

13.8. The Parties shall set out the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subject as required by the provision of the Services as required by Article 28(3) of the GDPR or equivalent provisions of any Data Protection Laws.

13.9. In the course of providing any Software or Services to Client under the Agreement, the Supplier shall observe all its obligations under the Data Protection Laws which arise in connection with the provision of the Software and/or the Services.

- 13.10. Where Supplier processes Personal Data for Client as a Data Processor, it shall:
- a. process the Personal Data solely on the documented instructions of Client, for the purposes of providing the Services;
 - b. process the Personal Data solely on the documented instructions of Client, for the purposes of providing the Services;
 - c. process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services, as described in the form referred to in section 3;
 - d. take all measures required by Article 32 of the GDPR to ensure the security of the Personal Data;
 - e. take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data, and their treatment of the Personal Data as confidential;
 - f. not transfer the Personal Data to any country outside the European Economic Area (EEA) without the prior written consent of Client;
 - g. not permit any third party to Process the Personal Data without the prior written consent of Client, such consent to be subject to the Supplier meeting the conditions set out in Article 28 (2) and (4) of the GDPR;
 - h. promptly notify Client of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either party's obligations under the Data Protection Laws in respect of the Personal Data;
 - i. promptly, and in any case within 24 hours upon becoming aware, notify Client of any Personal Data Breach, such notice to include all information reasonably required by Client to comply with its obligations under the Data Protection Laws;
 - j. upon request, provide Client with reasonable assistance in carrying out data protection impact assessments;
 - k. permit Client, on reasonable prior notice, to inspect and audit the facilities and systems used by the Supplier to Process the Personal Data, the technical and organisational measures used by the Supplier to ensure the security of the Personal Data and any and all records maintained by the Supplier relating to that Processing;
 - l. provide any assistance reasonably requested by Client in relation (i) any communication received under section 4.2.7, as well as any similar communication received by Client directly; and (ii) any Personal Data Breach, including by taking any

appropriate technical and organisational measures reasonably requested by Client;
and

m. cease Processing the Personal Data immediately upon the termination or expiry of this Agreement and at Client's option either return, or securely delete the Personal Data.

13.11. Any breach of this Clause shall constitute a material breach of the Agreement.

13.12. Each Party shall indemnify and hold harmless the other against all losses, fines and sanctions arising from any claim by a third party or Supervisory Authority arising from any breach of this clause 13 by the Party which has committed a breach.

14. Waiver

The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.

15. Force Majeure

15.1. Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by circumstances beyond the reasonable control of a party to this Agreement (including a labour dispute between a third party and its employees) (a "Force Majeure Event").

15.2. The party claiming the Force Majeure Event shall promptly notify the other party in writing of its reasons for the delay or stoppage and its likely duration and shall take all reasonable steps to overcome the delay or stoppage.

15.3. If the party claiming the Force Majeure Event has complied with clause 15.2, its performance under this Agreement shall be suspended for the period that the Force Majeure Event continues, and the party will have an extension of time for performance equal to such period.

15.4. Any costs arising from such delay or stoppage shall be borne by the party incurring those costs.

15.5. The party claiming the Force Majeure Event shall take all reasonable steps necessary to bring that event to a close or to find a solution by which its obligations under this Agreement may be performed despite the Force Majeure Event.

15.6. If the Force Majeure Event continues for more than 30 consecutive days, either party may terminate this Agreement with immediate effect on giving written notice to the other party and neither shall be liable to the other for such termination.

16. Non-solicitation

16.1. The parties agree that neither of them will, unless otherwise agreed in writing, either on their own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of 12 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any key executive of the other party or person who is or has been part of the Supplier team who has worked in the provision of the Services to Client at any time during the last 12 months of the Term.

16.2. In the event that either party breaches this non-solicitation provision, the offending party agrees to pay the other party a sum equal to three month's salary that the offending party is to pay the employee.

17. Termination

17.1. Supplier may terminate this Agreement by giving to Client not less than 120 days' written notice of termination after the end of the Minimum Term.

17.2. Client may terminate this Agreement by giving to Supplier not less than 120 days' written notice of termination after the end of the Minimum Term.

17.3. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits any material breach of this Agreement and the breach is not remediable or remedied by the breaching party within 90 days from the establishment of the breach and the serving of notice in writing of the breached party requiring the breach to be remedied by the breaching party;

17.4. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party:

- a. is dissolved;
- b. ceases to conduct all (or substantially all) of its business;
- c. is or becomes unable to pay its debts as they fall due;
- d. is or becomes insolvent or is declared insolvent; or

- e. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- f. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- g. an order is made for the winding up of the other party, or the other party passes a resolution for its winding-up (other than for the purpose of a solvent company re-organization where the resulting entity will assume all the obligations of the other party under this Agreement); or

17.5. Supplier may terminate this Agreement immediately by giving written notice to Client if:

- a. any amount due to be paid by Client to Supplier under this Agreement is unpaid by the due date and remains unpaid upon the date that written notice of termination is given; and
- b. Supplier has given to Client at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 17.5.

18. Effects of Termination

18.1. Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 2, 6, 9, 11, 12, 13, 16, 20 and 21.

18.2. Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

18.3. For the avoidance of doubt, the licenses of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, Client must immediately cease to access, use and operate the Software upon the termination of this Agreement.

18.4. Within 10 Business Days following the termination of this Agreement, Client shall:

- a. return to Supplier or dispose of as Supplier may instruct all media in its possession or control containing the Software (if any); and
- b. irrevocably delete from all computer systems in its possession or control all copies of the Software,

c. and if Supplier so requests Client shall procure that a director of Client certifies to Supplier, in a written document signed by that person and provided to Supplier within 5 Business Days following the receipt of Supplier's request, that Client has fully complied with the requirements of this Clause 18.4.

19. Notices

19.1. Any notice from one party to the other party under this Agreement must be given by verified email and such notice(s) will be deemed to have been received by recipient on receipt of a valid electronic mail delivery receipt.

19.2. The parties' contact details for notices under this Clause 16 will be provided in the Project & Services Agreement between the parties, or as notified to the other from time to time.

20. General

20.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

20.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

20.3. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

20.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

20.5. This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

20.6. Subject to Clause 1, this Agreement together with any Project & Service Agreements between us, shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

20.7. This Agreement shall be governed by and construed in accordance with the laws of England.

20.8. The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

21. Interpretation

21.1. Under these terms and any agreement in which they are incorporated, a reference to a statute or statutory provision includes a reference to:

- a. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- b. any subordinate legislation made under that statute or statutory provision.

21.2. The Clause headings do not affect the interpretation of this Agreement.

21.3. References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided;

21.4. In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.