TERMS OF USE (EMQnet.com)

Effective April 2014

Dynamiq Strategy Pty Ltd (hereinafter referred to as "Dynamiq®") has developed the following Terms of Use in order to demonstrate our firm commitment to disclosing our information gathering and dissemination practices. By completing the EMQnet Services Agreement and creating an account you agree to be bound by the following terms and conditions ("Terms of Use").

1. **Definitions**
    1.1. "Authentication Details" means any URL, user identities, security and passwords we provide to you as part of any access to web-based systems hosted by Dynamiq
    1.2. "Client" means the legal entity entitled to ownership of the e-mail address used by the registered User and to which the User is associated through an employment relationship, consulting arrangement or similar circumstances. Client shall not mean an Internet Service Provider (ISP) or similar provider even though such provider may be entitled to ownership of the e-mail address utilised by the User.
    1.3. "Confidential Information" means all information relating to Content and the parties whether verbal or recorded on paper or by electronic means but excludes information which is or subsequently becomes known or generally available to the public otherwise than in consequence of a breach of these terms.
    1.4. "Content" means all visual, written or audible data, text, images, sounds, computer programs and any other information or material including, without limitation: Personal Information, documents, spreadsheets, messages, form entries, web pages, and similar material, which are uploaded to, transferred through, publicly posted, processed or entered into the Services by or for the User.
    1.5. "Dynamiq" "We" "Our" or "Us" means Dynamiq Strategy Pty Ltd (ACN 168 305 191), the owner of the Web Site known as EMQnet located at www.EMQnet.com , its successors and assigns.
    1.6. "EMQnet" means the Services available on the Web Site located at www.EMQnet.com and provided by Dynamiq.
    1.7. "Intellectual Property Rights" means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
    1.8. "Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
    1.9. "User" or "You" means an individual holder of an e-mail address who gains access to or uses the Services provided on EMQnet.
    1.10. "Service" and "Services" means the web services, all the User's Teams, associated software, and other services related thereto provided to the User by Dynamiq (including, without limitation, any Trial Service) in accordance with this agreement and with the characteristics and features as described at www.EMQnet.com from time to time.
    1.11. "Software" means the software and all associated documentation and other materials provided by Dynamiq to Client to access EMQnet.
    1.12. "Trial Service" means a Service, provided free of charge, which is under development or evaluation and is marked "trial", "demo", "free" or "evaluation" (or a similar designation).
    1.13. "Web Site" means Dynamiq's web site at www.EMQnet.com.

2. S**ervices and Subscription Grant**
    2.1. If we accept the Client's application, we will provide to the Client a non-transferable, non-exclusive, non sub-licensable limited term right and subscription for the Users to access and use EMQnet ("the Service") in accordance with these terms and conditions.
    2.2. Dynamiq reserves the right to effect modifications to the design, operational method, technical specifications, systems, and other functions, etc. of the Services, at any time without prior notice.
    2.3. The Services are normally available over the Internet around the clock. Dynamiq shall be entitled to take measures that affect the aforementioned accessibility where Dynamiq deems such to be necessary for technical, maintenance, operational, or security reasons. The Client is also aware and acknowledges that the Client's access to the Internet cannot be guaranteed and that Dynamiq shall not be liable for deficiencies in the Client's or User's own Internet connections or equipment.
    2.4. The Client may grant other Users access to EMQnet so long as this is within the agreed number of Users as per the individual contract between the Client and Dynamiq.
    2.5. Dynamiq shall be entitled to retain subcontractors for the performance of obligations in accordance with this agreement. Dynamiq shall be liable for the subcontractors' work and services in the same manner as for its own work and services.
    2.6. In the event the Client enters into this agreement and creates a User access using an e-mail address not belonging to the Client, such User access may be or may later become subject to additional terms and conditions resulting from the Client's existing or future business relation with Dynamiq. The User is aware of and acknowledges that the Client, in such event, may effectuate actions that could change the nature of the Services provided to the User or impose access restrictions on the User's access to the Services. Such actions may include, without limitation, administrative actions by the Client, instructions issued by the Client to Dynamiq and actions due to a discontinuation of an employment or consulting relationship with the User.

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3.   Trial Services

3.1.   Occasionally Trial Services may be provided to Clients. These Trial Services are provided strictly "as is". The Client may use a Trial Service in a manner consistent with the terms and conditions of this agreement, but Dynamiq may, at its sole discretion, disable certain features of a Trial Service and enforce time limits on the Client's right to use the same. In light of the fact that a Trial Service is provided free of charge, Dynamiq disclaims all warranties as set forth in this agreement and Dynamiq shall not be liable for any damages related to the User's use of a Trial Service. Any Trial Service will be for a maximum of 30 days duration.

4.   User Obligations

4.1.   Client must not use, attempt to use, or allow any Services to be used in any way:

a.   in connection with advertising, chain letters, junk mail, surveys, spamming or any duplicative or unsolicited messages, or any use of distribution lists to any person who has not given specific permission to be included in such a process (commercial or otherwise);

b.   to harvest or otherwise collect information about others, including e-mail addresses, without their express consent;

c.   to use, download, or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of any other person or any usage information, other than in the context using the Services as permitted under these terms and conditions;

d.   to attempt to gain unauthorised access to the Services or other accounts, computer systems, or networks connected to the Services through password mining or any other means;

e.   unless expressly set out in these terms and conditions, to use, copy, modify, create derivative works of, distribute, resell, rent, lease, assign, pledge, sub-licence, loan, timeshare, deliver, distribute, grant a security interest in, or otherwise transfer any rights in the Services (directly or indirectly, in whole or in part);

f.   to reverse-engineer, modify, decompile, disassemble, translate, or otherwise attempt to learn, derive or view source code from any part of the Services except as permitted by a law which cannot be excluded;

g.   to defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy) of others;

h.   to upload, or otherwise make available, files or Content that contain images, photographs, software, or other material which infringes our rights or any other person's rights, including Intellectual Property Rights or moral rights;

i.   to upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar information that may damage the operation of another's computer, property or information;

j.   to falsify, delete, alter or add any copyright management information, such as author attributions, Marks, copyright notices or other proprietary rights markings, or labels of the origin or source of the Services, Content or other material contained in a file that is uploaded;

k.   which results in you or us breaching, or being involved in a breach of a law, order or regulation (including a foreign law, order or regulation), a mandatory code of conduct, or a voluntary code of conduct that you have agreed to comply with;

l.   which results, or could result in damage to property or injury to any person;

m.   which incites discrimination, hate or violence towards one person or group because of their race, religion, gender or nationality;

n.   to send, display or be otherwise involved in material which is obscene or defamatory or which would be considered by a reasonable person to be offensive or abusive;

o.   to engage in misleading or deceptive business or marketing practice or conduct that involves engaging in, providing or promoting unlawful trading activities including, without limitation, trading shares on inside information;

p.   which constitutes a misuse of our or any other person's confidential information or which results in a breach by you of any obligation that you owe to any person.

4.2.   The Client shall comply with the security and administrative regulations as notified in conjunction with registration, by e-mail or in any other manner.

4.3.   The Client undertakes, in conjunction with registration, to provide correct information regarding the User's identity and a correct and legitimate e-mail address.

4.4.   The Client shall be responsible for the activities conducted through use of the Services and shall ensure compliance with national laws in conjunction therewith. All Content uploaded to, transferred through, publicly posted, processed or entered into the Services by Users shall be the sole responsibility of the Client.

4.5.   The Client shall be responsible for monitoring its Users and shall be liable vis-à-vis Dynamiq for ensuring that Content transferred to or handled within the Services which is processed by the Client and/or individuals invited by the Client or its Users does not infringe any third party rights nor in any other manner violates governing legislation, and that the Client and Users possesses such necessary licences from third parties as may be required in order to process the Content/use the Services.

4.6.   The Client undertakes to use the Services in such a manner that such use does not prevent or disrupt other computer communications or mobile telephone communications or prevent or disrupt the equipment employed in order to provide and use the Services.

4.7.   The Client is aware and acknowledges that use of the Services is not permitted to gain material in violation of law or material which in any manner contravenes generally accepted practices.

4.8.   The Client undertakes not to use the Services in order to obtain material which per se or if sent to another party might injure the reputation of a third party, or in any manner which may result in the infringement of any third party's copyright, or which constitutes a dissemination of business secret, or may incite a third party to commit or participate in a crime, or may be understood as constituting a threat, or to use the Services in any other manner incompatible with the purpose thereof.

4.9.   The Client is obligated to notify Dynamiq regarding any suspected breach of these provisions and it is an important condition that you tell us as soon as you become aware that the access method used by you or any User is lost or stolen or you suspect that your (or any User's) access password has become known to someone else or its security compromised in any way.

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5. Intellectual Property Rights

5.1. Dynamiq shall retain all right, title, and interest, including all Intellectual Property Rights, relating to or embodied in the Services, including without limitation all technology, software, and copies relating to the Services. Such intellectual property rights and technical solutions may only be used by the Client in the manner stated in this agreement. Under no circumstances shall the Client or a third party acquire any Intellectual Property Rights to the Services or to the software or technical solutions used in the Services, or to any trademark or any other business mark belonging to or used by Dynamiq. Access to the Services is by subscription only.

5.2. All Content uploaded to, transferred through, publicly posted, processed or entered into the Services by the Client shall remain the sole property of the Client or its respective legal owner. The Client grants to Dynamiq a non-exclusive, worldwide, royalty-free, fully-paid, transferable licence to host, cache, record, copy, and display Content solely for the purpose of providing the Services to Client. Except as licenced in these terms and conditions, as between Client and Dynamiq, Client retains all right, title, and interest in and to the Content. Dynamiq shall have no liability for such Content.

6. Personal Data, Privacy

6.1. Dynamiq may collect, retain, use and disclose the Personal Information supplied by Client (including transferring the Personal Information outside Australia) for the purpose of providing the Services to the Client, including, without limitation: identifying information about the participants using the Services, such as a name or document that is displayed, transmitted, processed, or stored as part of the functionality of the Services or the contribution and distribution of Content. In order for the Client to be able to use the Services, the Client must provide certain data to Dynamiq, including but not limited to full name, e-mail address and contact details. In the event a User invites another User to access EMQnet, such information may also have been provided to Dynamiq by the inviting User. Following receipt of such data, Dynamiq will process the same using automatic data processing in order to enable Dynamiq to administer and otherwise perform its obligations within the scope of the Services and to ensure that unauthorised persons do not gain access to the Services. Upon request, the User has the right to access the personal data related to the User. The User also has the right and the obligation to rectify such data. Further information may be obtained by contacting Dynamiq Pty Ltd at the following address:

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4 Akuna Drive
PO Box 899
Williamstown, Victoria 3016, Australia
+61 3 8340 5200

6.2. Dynamiq comply with the National Privacy Principles as incorporated into the Privacy Act (Australia). Where necessary Dynamiq will obtain the consent of registered persons (i.e. the Users) to the processing of the relevant personal data by Dynamiq.

6.3. By accepting this agreement, the Client explicitly consents to (a) the collection and processing by Dynamiq of personal data as described above, (b) the storage of such data until the User account is terminated by the Client, and (c) the storage and retrieval of information on the User's end terminal equipment as described above.

6.4. Dynamiq shall adopt reasonable measures to protect the privacy of the User. Dynamiq's information gathering and dissemination practices are set forth in the Privacy Statement applicable from time to time and available on request.

7. Authentication Details

7.1. Dynamiq shall not be responsible for loss or distortion of Content forwarded electronically in or through the Services where such is not due to the negligence or intentional acts of Dynamiq.

7.2. The Client shall ensure that the Authentication Details including, without limitation, identities, passwords, and equivalent obtained by the Client's Users in conjunction with registration are stored and used in a secure manner and cannot be accessed and thereby used by third parties. The Client shall be liable for any unauthorised use of the Services. Dynamiq shall have no liability for any loss or damage arising from the Client's failure to comply with these requirements.

7.3. Where it is suspected that any unauthorised person has become aware of any Authentication Details, the User or the Client shall immediately notify Dynamiq.

7.4. The Client is solely responsible for the security of its Authentication Details and the use of the Services using the Client's and User's Authentication Details, regardless of whether or not the use was authorised by the Client. Except if such loss or damage is caused by negligence or material breach by Dynamiq of this Agreement, Dynamiq shall not be liable to the Client for any loss or damage that Client or any third party suffers as a result of Client's use of the Services or from disclosure of Client's Authentication Details prior to notification.

7.5. After Dynamiq has been notified of a suspicion that an unauthorised person has become aware of a User identity/password, the Client shall be liable for Dynamiq's acts or omissions only where the Client or User has acted with intent or gross negligence.

7.6. Dynamiq shall adopt reasonable measures to ensure that the security of the Services meet relevant industry standards. Dynamiq's security measures are set forth in the Security Policy as applicable from time to time and available on request.

7.7. Dynamiq will not change alter edit or delete data entered into EMQnet by the Client or Guest of the Client including typographical text entries and any attachments uploaded into EMQnet. If the Client requires Dynamiq to change alter edit or delete any typographical text entries and any attachments uploaded into EMQnet then the Client must make the request in writing including the name position and signature of the authorised requesting Client representative.

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8. No Warranty

8.1. Subject to clause 9.5, Dynamiq is providing the Services "as is", without any warranty of any kind.

8.2. To the extent permitted by law, Dynamiq expressly disclaims all warranties with respect to the Services, whether express or implied, including without limitation: fitness for a particular purpose; accuracy or reliability of results from use of the Services; that the Services will meet specific requirements; that information or Content available through the Services will be accurate, complete, or current; that the Services will be uninterrupted, completely secure, free of software errors; or that defects and deficiencies in the Services will be corrected.

9. Limitation of Liability

9.1. The Client shall not be entitled to damages or other remedies in the event of disruption of operations or errors that impede Internet data communications.

9.2. In the event third-party claims are brought against Dynamiq as a result of the use of the Services, the Client shall hold Dynamiq harmless in respect of such claims.

9.3. Dynamiq shall not be liable to the Client in the event of the Service not being available for use, lost profits, loss of business, distortion, corruption or loss of data or other defects or deficiencies in provided Services or support that are due to Dynamiq. Except as provided in these terms Dynamiq will not be liable for any consequential, special, indirect or punitive damages, even if advised of the possibility of such damages or for any claim by any third party. Dynamiq is not liable to the Client for any warranties, Content including without limitation errors in Content made by a third party and Dynamiq is not responsible for representations, omissions or errors by a third party. Errors must be notified by the Client in accordance with Dynamiq's instructions as issued from time to time.

9.4. Dynamiq's liability in accordance with this agreement is limited to AUD$ 0 (nil). Under no circumstances shall Dynamiq be liable for direct or indirect losses, loss of profits or anticipated savings, loss of revenue, loss of data, or claims for compensation from third parties.

9.5. Notwithstanding anything in these terms of use, the Client may have the benefit of certain rights or remedies pursuant to the Trade Practices Act 1974 (Cth) and similar State and Territory laws in Australia (and New Zealand as appropriate) in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited, at Dynamiq's option:

    a.   in the case of goods, to either the replacement of the goods or the correction of defects in the goods; and

    b.   in the case of services, to either the re-supply of the services or the cost of the re-supply of the services.

9.6. Client agrees that to the extent permitted by law, Dynamiq will not be liable for:

    a.   any Content, including Content that is sent, received, held, released or otherwise connected in any respect to the Service;

    b.   Content that is sent but not received;

    c.   any access to or alteration of Content;

    d.   any Content sent using and/or included in the Service, including without limitation any threatening, defamatory, obscene, offensive, or illegal Content;

    e.   the conduct of anyone other than Dynamiq employees, agents and subcontractors; or

    f.   any infringement of another's rights, including privacy, Intellectual Property Rights, or privacy rights.

10. Force Majeure

10.1. Dynamiq shall be released from liability in damages and other sanctions where the Client's access to the Services is prevented or rendered materially more onerous due to circumstances beyond Dynamiq's control and which it could not have reasonably foreseen. Such force majeure events include, inter alia, labour conflicts, lightning, fire, decisions of public authorities or other public regulations, errors in another operator's network, delays in services from subcontractors due to events as stated above, general scarcity of transport, goods, or energy, extreme weather events or other similar circumstances.

11. Confidentiality, etc.

11.1. Dynamiq undertakes not to disclose to any third party, or otherwise make available, information received by Dynamiq from the Client within the scope of this agreement. This confidentiality obligation shall not apply to such information as Dynamiq can demonstrate became known to Dynamiq other than pursuant to this agreement or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to provide information pursuant to legal provisions, public authority regulations or court orders. The duty of confidentiality shall remain in force notwithstanding the termination of this agreement.

11.2. Dynamiq reserves the right to analyse usage patterns in an aggregated form.

11.3. Except for Content mentioned above and other than pursuant to the User's instructions, legal provisions, public authority regulations or court orders, Dynamiq shall not be entitled to review Content processed by the Client via the Services.

12. Amendments

12.1. 12.1 Dynamiq reserves the right to amend the terms of use of this agreement at any time without prior notice. The Client shall be informed of such amendments by e-mail or through the information being made available on the Web Site.

13. Term of agreement and Termination, etc.

13.1. This agreement shall enter into force upon acceptance by the Client of these terms of use. This agreement shall remain in force for the period of the agreement, renewing automatically for further periods of 12 months, until such time that the Client account is closed.

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13.2. This subscription is effective until terminated. It will terminate upon the conditions set out in this agreement or if Client fails to comply with any of its terms. Upon termination Client agrees that all Authentication Details will be destroyed and all Client and User access rights to EMQnet will end.

13.3. Upon termination of this agreement, Dynamiq shall not be responsible for the Content generated by the Client in question or the Services. Accordingly, the Client must ensure that the Client possesses any necessary back-up copies of Content that the Client desires to retain.

13.4. Upon the active termination of this agreement by the Client, Dynamiq shall hold pre-existing data for a period no longer than ninety (90) days. In the event of expiration of the subscription term of a Client and in the absence of the Client's renewal of the same, Dynamiq shall be entitled to delete and destroy such Content ninety (90) calendar days following the expiration date. Any Client requirement for forensic deletion of data will be at the Client's expense. Any Client requirement for electronic copies of Client data will be at the Client's expense.

13.5. Upon termination of a Client or this agreement for any reason, Dynamiq shall be entitled to and undertakes to permanently delete and destroy all copies of the Client's Content related thereto within a timeframe reasonable relating to the back-up and administrative procedures applied by Dynamiq from time to time. Any Client requirement for forensic deletion of data will be at the Client's expense.

13.6. Sections 9 and 11 shall survive any termination of this agreement.

14. Access Restrictions, Premature Termination

14.1. Dynamiq shall be entitled, with immediate effect, to disable the Client's access to the Services or to prematurely terminate this agreement where: (a) the Client uses the Services in a manner that entails the perpetration of a crime; (b) the Client uses the Services in a manner that occasions losses or the risk of loss for Dynamiq or any third party; (c) the Client uses the Services in a manner that violates Dynamiq's security or administrative regulations; (d) it may be reasonably assumed that continued dissemination of Content violates governing law; (e) the Client uses the Services in a manner whereby the Client utilises resources or seeks unauthorised access to Dynamiq's systems which are not intended for the Client; (f) if we reasonably believe that the Client is infringing our Intellectual Property Rights; (g) consider it unavoidably necessary to comply with any ruling, order, regulation, proceeding or investigation; (h) if the client fails to renew or pay for a subscription within ninety (90) days of the due date of a subscription renewal or (i) if the Client otherwise fails to comply with the above and such breach of contract is material.

15. Assignment

15.1. Dynamiq shall be entitled, in whole or in part, to assign its rights and obligations under this agreement to a company within the same de jure or de facto group of companies as Dynamiq without the Client's prior consent.

15.2. The Client shall not be entitled to assign his/her rights or obligations under this agreement but this agreement will bind Client's successors and assigns in any event at the sole discretion of Dynamiq.

16. General Provisions

16.1. This agreement has been prepared in the English language and the same shall be controlling in all respects. Any non-English versions of this agreement are provided solely for accommodation purposes.

16.2. If any provision of this agreement is declared unenforceable for any reason, the remainder of this agreement will continue in full force and effect, and the unenforceable provision shall be amended to the extent possible and permitted by law to achieve as nearly as possible the same intent and economic effect as the original provision.

17. Governing Law and Disputes

17.1. This agreement and the ensuing relationship between Dynamiq and the Client shall be construed in accordance with, and governed by, the laws of the State of Victoria, Australia and each party shall submit to the non-exclusive jurisdiction of the Courts of that State.

17.2. All disputes relating to this agreement shall be adjudicated in Melbourne, Victoria, Australia.

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