

Terms of Service

These Terms of Service (“Agreement”) are between Dynapt Inc. (“Dynapt”) and their clients (“Company”).

Dynapt is engaged in the business of Software Engineering and technology services and the Company desires to retain Dynapt to periodically and on an as needed basis, provide technical and commercial advice to the Company and to act as a representative of the Company for certain functions, including meetings and presentations, and to provide such other services as requested and described in “Statements of Work” (“SOW”). SOWs will be mutually agreed to and set forth in individual documents and executed by both parties as an addendum to this Terms of Services agreement and reference this Agreement.

Therefore, the parties agree as follows:

1. Appointment
 - 1.1. Subject to the provisions set forth below, the Company hereby appoints Dynapt, and Dynapt hereby accepts its appointment, as a nonexclusive, independent Consultant of the Company to perform Services as described herein.
2. Assignment; Services and Software
 - 2.1. Dynapt represents that Dynapt possesses technical experience, knowledge, and training sufficient to perform the services described in a separate Scope of Work document. All services for the Company will be charged in accordance with that same Scope of Work document, and performed in a careful, professional and competent manner.
 - 2.2. Dynapt’s primary contact at the Company during the term of this Agreement will be determined by the Company. Dynapt, if working on the Company’s premises, will observe the Company’s working hours and holiday schedule and follow the Company’s rules and policies relating to security of, access to or proprietary or confidential information. Dynapt will not remove any property of the Company, including proprietary or confidential information, from the Company premises without the prior written consent of the Company.
 - 2.3. Dynapt will comply at all times with all applicable laws, regulations, codes and standards.
 - 2.4. The Company will make available to Dynapt, at The Company’s expense, any material required to fulfill its obligation with the Company, including, but not limited to:
 - 2.4.1. Source code for the Company’s products.
 - 2.4.2. Software licenses for any required third-party software required for the engineers to perform their duties in alignment with the Company operating in-house standards.
 - 2.4.3. Manuals and or documentation that will aid the productivity of the engineers provided by Dynapt.
 - 2.5. The Company will deliver the needed materials within ten (10) business days from the date of a completed contract with Dynapt.
 - 2.6. End User License Agreements for Software licenses
 - 2.6.1. Dynapt re-sells software products. By purchasing these products through Dynapt, the Company agrees to be bound by the end user license agreements (“EULAs”). The EULAs can be found at the following websites:
 - 2.6.1.1. Trend Micro EULA: https://www.trendmicro.com/en_us/about/legal.html

2.6.1.2. Microsoft EULA: <https://www.microsoft.com/en-us/useterms/>

2.6.2. The Company acknowledges that it has read and agrees to the terms of the EULAs, and that it will comply with all applicable laws and regulations related to the use of the software. The customer is solely responsible for ensuring that its use of the software does not violate any third-party rights. Dynapt shall have no liability for any claims, damages, or losses arising out of or related to the customer's use of the software.

3. Independent Contractor

3.1. Dynapt will be and remain an independent contractor at all times during the performance of services for the Company, and will not be agent, employee, joint venture, business partner, or legal representative of Dynapt represents and warrants that there is not contractual restriction, confidentiality obligation, conflict of interest or other limitation with any other employment or business that Dynapt is engaged that will interfere, delay or prevent Dynapt's performance of its obligations under this Agreement. Dynapt covenants not to affirmatively or impliedly indicate to any third party that he/she has any authority to legally, contractually, or otherwise bind the Company.

3.2. Dynapt will bear and be solely responsible for paying all applicable taxes and contributions in connection with the receipt of payment for Dynapt's services by the Company.

4. Compliance with Laws

4.1. The Company and Dynapt each agree to comply with all laws, rules, and regulations applicable to this Agreement or the performance of work hereunder. If either party is required to pay any fine or penalty resulting from the other party's violation of such laws, rules or regulations, the party who committed the direct violation shall immediately reimburse the other for any such payment.

5. Payment

5.1. As full compensation for the performance of all services under this Agreement and other obligations of Dynapt hereunder, the Company will pay to Dynapt the rates specified in the Statements of Work, and other charges, if any, set forth in the Statements of Work. Dynapt will maintain contemporaneous records of services performed, a copy of which will be provided with each invoice submitted hereunder. Dynapt will submit bi-weekly written invoices to the Company and the Company will pay each invoice within 15 days after receipt of the invoice.

5.2. Late payment:

5.2.1. Services: If payment is not received within 15 days of the invoice date, a late fee of 1.5% will be added to the outstanding balance. If payment is not received within 30 days of the invoice date, Dynapt may suspend or terminate services until payment is received.

5.2.2. Subscription Software licenses: If payment is not received on the renewal date the license will be suspended until payment is received. License will be suspended for 15 days before after which the license will be cancelled.

5.2.3. The Company will be responsible for any costs associated with collection of the unpaid balance, including reasonable attorney's fees and court costs.

6. Confidentiality

- 6.1. "Confidential Information" means any confidential technical data, trade secret, know-how or other confidential information disclosed by any party hereunder in writing, orally, or by drawing or other form and which shall be marked by the disclosing party as "Confidential" or "Proprietary." If such information is disclosed orally, or through demonstration, in order to be deemed Confidential Information, it must be specifically designated as being of a confidential nature at the time of disclosure and reduced in writing and delivered to the receiving party within thirty (30) days of such disclosure.
 - 6.2. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is known to the receiving party at the time of disclosure or becomes known to the receiving party without breach of this Agreement; (ii) is or becomes publicly known through no wrongful act of the receiving party or any subsidiary of the receiving party; (iii) is rightfully received from a third party without restriction on disclosure; (iv) is independently developed by the receiving party or any of its subsidiary; (v) is furnished to any third party by the disclosing party without restriction on its disclosure; (vi) is approved for release upon a prior written consent of the disclosing party; (vii) is disclosed pursuant to judicial order, requirement of a governmental agency or by operation of law
 - 6.3. Dynapt agrees that it will not disclose any Confidential Information to any third party and will not use the Company's Confidential Information for any purpose other than for the performance of the rights and obligations hereunder during the term of this Agreement and for a period of two (2) years thereafter, without the prior written consent of the Company. Dynapt further agrees that Confidential Information shall remain the sole property of the Company and that it will take all reasonable precautions to prevent any unauthorized disclosure of Confidential Information by its employees. No license shall be granted by the Company to Dynapt with respect to Confidential Information disclosed hereunder unless otherwise expressly provided herein. Moreover, Dynapt understands the sensitive nature of Confidential Information and the underlying project.
 - 6.4. Upon the request of the Company, Dynapt will promptly return all confidential information furnished hereunder and all copies thereof.
 - 6.5. If Dynapt breaches any of its obligations with respect to confidentiality and unauthorized use of Confidential information hereunder, the Company shall be entitled to equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages notwithstanding anything to the contrary contained herein.
 - 6.6. Notwithstanding the foregoing, Company grants Dynapt a non-exclusive right and license to feature Company's name and a general description of the services provided and relating to this Agreement in Dynapt's advertising, marketing, packaging, and other like promotional material.
7. Ownership of Work Product
 - 7.1. All work performed by Dynapt on Software and any supporting materials and documentation therefore shall be considered as "Works Made for Hire" (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of the Company excluding Dynapt's proprietary work.
 - 7.2. Company has the right to use or not use the Software and to use, reproduce, re-use, alter, modify, edit, or change the Software as it sees fit and for any purpose.

8. Indemnity

- 8.1. Dynapt hereby agrees to defend, indemnify, and hold Company, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against Company based on any breach by Dynapt of its representations and warranties under this Agreement, and for any claims made by any third party alleging that Software infringes its intellectual property rights.
- 8.2. Company hereby agrees to defend, indemnify, and hold Dynapt, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against Dynapt based on any breach by the Company of its representations and warranties under this Agreement, and for any claims made by any third party alleging that Software infringes its intellectual property rights.

9. Infringements

- 9.1. The Company shall have the right, in its sole discretion, to prosecute lawsuits against third persons for infringement of its rights in Software. Any lawsuit shall be prosecuted solely at the Company's expense and all sums recovered shall be retained by the Company.
- 9.2. Dynapt agrees to fully cooperate with the Company in the prosecution of any such suit and the Company shall reimburse Dynapt for any previously approved expenses that it might incur as a result of such cooperation.

10. Non-solicitation

- 10.1. Company agrees not to knowingly hire or solicit Dynapt's employees during performance of this Agreement and for a period of one (1) year after termination of this Agreement without Dynapt's prior written consent.
- 10.2. Dynapt agrees not to knowingly hire or solicit the Company's employees during performance of this Agreement and for a period of one (1) year after termination of this Agreement without the Company's prior written consent.

11. Termination

- 11.1. Termination for Breach: Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after the written notice of such breach is sent to the other party. If Dynapt terminates this Agreement because of Company's failure to pay outstanding invoices for accepted work within thirty (30) days, all amounts payable or accrued to Dynapt under this Agreement shall immediately become collectible.
- 11.2. Termination for Convenience: This Agreement may be terminated by either party for convenience upon ninety (90) days prior written notice to the other party. Upon such termination, all amounts owed to Dynapt under this Agreement shall immediately become due and payable and all rights and licenses granted by Dynapt to the Company under this Agreement shall immediately terminate.
- 11.3. Suspension of Services: Notwithstanding the foregoing, following ten days written notice to Company of failure to pay any Fees, Dynapt may, at its option, at any time either terminate this Agreement or temporarily discontinue any or all Services provided hereunder.



12. Jurisdiction/Disputes

- 12.1. Any dispute that arises under or in connection with this Agreement will be submitted for informal resolution to the Company's senior Human Resources representative. Should the parties be unable to resolve any dispute informally, both parties consent jurisdiction by the state and federal courts sitting in the State of Texas.

13. Agreement Binding on Successors

- 13.1. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors, and assigns.

14. Assignability

- 14.1. Neither party may assign this Agreement or the rights and obligations thereunder to any third-party without the prior express written approval of the other party which shall not be unreasonably withheld.

15. Waiver

- 15.1. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

16. Severability

- 16.1. If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

17. Integration

- 17.1. This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. Both the Terms of Service & any related Statements of Work shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

18. Miscellaneous

- 18.1. This Agreement will inure to the benefit of and be binding upon the Company and, to the extent permitted herein, Dynapt and their respective successors and permitted assigns. No party may assign this Agreement without the prior written consent of the other party hereto, except that the Company may assign this Agreement with Dynapt's consent to any affiliate of the Company. This Agreement is entered into solely for the benefit of the parties named in it and not for the benefit of any other persons or entities. No other persons or entities may enforce it for their benefit nor will they have any claim or remedy for its breach.
- 18.2. This agreement will be governed by and construed and enforced in accordance with the laws of the State of Texas, excluding its conflict of laws rules.



- 18.3. Any dispute that arises under or in connection with this Agreement will be submitted for informal resolution between individuals designated by Dynapt and the Company. Should the parties be unable to resolve any dispute informally, both parties consent jurisdiction by the state and federal courts sitting in the State of Texas.
- 18.4. This Agreement may be executed by both parties in multiple counterparts, each of which will be deemed an original. Copies of this Agreement (including copies of any signatures) that are reproduced or transmitted electronically or via receipted fax transmission, will be equivalent to original documents.
- 18.5. If any provision of this Agreement will be held illegal, invalid, or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity, and enforceability of the remaining provisions will not be affected thereby.