



Master Subscription & Licence Agreement

METADATAWORKS™

Master Subscription & Licence Agreement

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between

Metadateworks Limited

and

[]

This Master Subscription & Licence Agreement is dated []

Parties

- (1) **Metadateworks Limited** incorporated in England with company number 07510090 whose registered place of business is at 30 Fore Street, Totnes, England, TQ9 5RP (MDW).
- (2) []

Background

- (A) MDW has developed software and a cloud-based platform which are made available to a variety of subscribing client organisations through web-based application services for the overarching purpose of improving the knowledge base of its client organisations.
- (B) MDW achieves this purpose by (i) enabling collaborative working on and across data projects (ii) analysing and quality-assuring different data-sets, and (iii) improving data management rules and practices. All of these services are designed for each client in a bespoke service specification Schedule to this Agreement containing a description of the actual service and other terms (the “**Service Specification Schedule**”).
- (C) The Services chiefly comprise the software, the platform, the web-based applications and the Metadata Exchange product in addition to the support and consultancy provided by MDW on a project by project basis. Other products may potentially be added to the Services and the Service Specification Schedule subject to agreement between the parties.
- (D) MDW and the Client reserve the right to enter into a separate service agreement for specific purposes and specific projects outside of this master agreement.
- (E) Through this master subscription & licence agreement (the “**MSLA**” or “**Agreement**”) the Services are provided through software-as-a-service contract architecture and are paid for by way of subscription payments by the Client. Both parties agree to be bound by their respective obligations, terms and conditions as set out in this MSLA.

Agreed terms

1 Definitions and Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Additional Services: any extra services to the Services provided by MDW through this MSLA requested by the Client in writing and then scoped and costed by MDW before agreeing to the provision of the extra services at the additional cost to be agreed and paid for by the Client.

Charges: any and all of the different categories of charges and fees set out in **Error! Reference source not found.** or elsewhere in this MSLA.

Confidential Information: information relating to MDW or the Client in whatever form or medium, which has been kept confidential by the party from whom the information originates and which has not come into the public domain during the Term in breach of any obligation of confidence. This includes all information relating to MDW, the Client Data, all technical or commercial information relating

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to the Services, the Client, the Software or any of its constituent parts, commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to MDW' business, customers, pricing and marketing.

Configuration Charges: the price for the Configuration Services (including the Training Charges) calculated in accordance with **Error! Reference source not found.** and which may include initial set up fees for particular projects and initiatives as described in **Error! Reference source not found..**

Configuration Services: the consultancy services (including the Training Services) to be provided by MDW to the Client in connection with the configuration of the Software and Services to align with the Client Software and systems and which may include some pre-agreed initial set-up work.

Contract Term: the total duration of this MSLA measured from the Effective Date and including any Initial Contract Term and any Renewal Period.

Client Data: all data (including Personal Data) provided by the Client or by End Users to MDW for the purpose of the Software or the Services relating to the Client and its End Users pursuant to this MSLA and all copies of such data.

Client Software: the software programmes or systems used, owned or deployed directly by the Client which are to interface with MDW Software and Products.

Data Controller: shall have the same meaning as set out in the Data Protection Legislation (and to the fullest extent possible shall apply to the Client)

Data Processor: shall have the same meaning as set out in the Data Protection Legislation (and to the fullest extent possible shall apply to MDW).

Data Protection Legislation: means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) (the **GDPR**) and any other directly applicable European Union regulation which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Data Support Fee: fees, costs and disbursements incurred by MDW when supporting the Client and its End Users with any subject access requests, data protection impact assessments, special processing requests, or support to any regulatory enquiries, investigations in connection with personal data such fees costs and disbursements to be invoiced to the Client and which shall be payable by the Client as a category of Charges payable at **Error! Reference source not found..**

Dispute Resolution Procedure: the procedure set out in clause 10

Effective Date: the date from which this MSLA shall be deemed to take effect.

End Users: individuals who are permitted to use the MDW platform and Services and who may be professional advisers, designers, agents, suppliers, customers, contractors, sub-contractors and other participants or stakeholders of the Client.

EULA: the end user licence agreement which sets out binding rules, rights and behaviours to be followed by individual users (the End Users) of the Services, Software and the platform in general.

Exit Assistance Fee: means the costs of all time, materials and labour incurred by MDW in connection with any termination or run-off of this Agreement including any migration work to a new supplier of data management and related services and including any work in connection with downloads, copies, archives and deletion services of Client Data.

MDW Data: data generated by or for MDW and incorporated into or utilised by the Services or the Software from time to time.

Force Majeure: any cause affecting the performance of either party's obligations under this MSLA or a factor preventing either party from substantially carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MDW or any other party), failure of a service provider such as a bank or third party software supplier or a utility service or transport or telecommunications network (or any other provider of a service which experiences an outage beyond MDW' control), act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or the maverick or rogue acts of an employee, agent or contractor.

Hosting Charges: the periodic charges for the Hosting Services as set out in **Error! Reference source not found..**

Hosting Services: the services to be provided by MDW (or any third party on MDW' behalf) to host the underlying cloud-based platform and web interface along with the requisite capacity for storage of data and the provision of secure access for End Users.

Initial Contract Term: means three months from the Effective Date.

Insolvency Event: occurs where:

- (a) a party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

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- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over any party (being a company);
- (e) the holder of a qualifying floating charge over the assets of any party (being a company) has become entitled to appoint or has appointed an administrative receiver, a person becomes entitled to appoint a receiver over the assets of any party or a receiver is appointed over the assets of any party;
- (f) a creditor or encumbrancer of any party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of that party's assets and such attachment or process is not discharged within 14 days;
- (g) any event occurs, or proceeding is taken, with respect to the any party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (f) (inclusive);
- (h) any party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, web interfaces, documents, information, techniques, business methods, drawings, logos, instruction manuals and procedures and advertising literature, including the "look and feel" of any websites.

Product: means the Metadata exchange product and any new packaged and saleable product which may or may not be bundled with the Services now or in future.

New Release: an updated release of all or any part of the Software or Products to which any modification, enhancement, revision or update has been made, or to which any further functions have been added.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Renewal Period has the meaning ascribed in clause

Service Levels: the service levels for the delivery of the Services set out in **Error! Reference source not found..**

Services: the cloud-based platform made available via a web interface along with the Software plus the Configuration Services, the Hosting Services, the Support Services, and any Additional Services to be provided by MDW to the Client.

Subscription Fee: the primary fee charged to a Client for the licensed use of MDW Software, Services and its platform designed on a per user basis.

Software: means the computer programme made available by MDW via web-based application services as part of the Services and as more particularly described in **Error! Reference source not found..**

Support Charges: the periodic charges for the Support Services as set out in **Error! Reference source not found.**

Support Services: the supporting technical services provided to the Client as described in **Error! Reference source not found.** and **Error! Reference source not found.**

Training Services: the training services designed to assist the Client and its End Users with the operation of the platform, Software and Services.

UK Data Protection Legislation: means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

- 1.2 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this agreement and any reference to this MSLA or Agreement includes the schedules.
- 1.3 A reference to a **company** or **organisation** shall include any company, organisation, public sector body, health trust or corporation or other body corporate, wherever and however incorporated or established.
- 1.4 In the event that the Client issues its own form of order form, purchase order or email request to MDW in relation to any product, service, Products or Services to be provided under this MSLA then any standard terms incorporated into such form shall not apply and the terms of this MSLA shall apply in their place.

2 Agreement Length & Termination

- 2.1 This MSLA shall take effect on the Effective Date and shall continue until the expiry of the Initial Contract Term and any Renewal Period or until the Client gives at least 93 days written notice that it is to end at any time thereafter (the **appropriate notice period**), but subject always to any special termination provisions that are detailed in the relevant Service Specification Schedule.
- 2.2 MDW agrees to provide the Services to the Client on the terms and conditions contained in the Agreement and the Service Specification Schedule and each Service shall be identified via a unique number and applicable commencement date.
- 2.3 If there is any direct conflict between any of the provisions in the main body of this Agreement and a Service Specification Schedule, the provisions in that Service Specification Schedule shall prevail for the period and the particular part of the Service to which it applies.
- 2.4 Each Service shall be provided for the period identified in its Service Schedule, unless this Agreement is terminated for any valid reason in accordance with this clause.
- 2.5 The Client accepts and agrees that this MSLA cannot be terminated within the Initial Contract Term in order to provide a minimum commitment by the Client to MDW.
- 2.6 It is a core term of this Agreement that the balance of all Charges to be paid by the Client to MDW (including any pre-agreed minimum commitment level) shall be fully due and payable for the full remaining Contract Term (whether that happens to be the remaining Initial Contract Term or Renewal Period or combination of these) notwithstanding any notice provided to terminate the MSLA given by either party.

- 2.7 Early termination outside of or in breach of the agreed Contract Term or agreed notice periods may result in the application of an early termination fee which if applicable shall be set out in Schedule 2.
- 2.8 Termination of this MSLA shall not function as a means to foreshorten or prevent any Charge or the payment of any invoice from being paid by the Client.
- 2.9 This MSLA shall, unless otherwise terminated as provided shall continue beyond the Initial Contract Term and thereafter this MSLA shall be automatically renewed for successive periods of 6 months (each a “**Renewal Period**”), unless terminated earlier in accordance with the provisions hereunder.
- 2.10 MDW may terminate this agreement with immediate effect during the Contract Term in any of the following circumstances:
- 2.10.1 if the Client is in breach of any obligation to pay any Charges due under this agreement provided that MDW may only terminate this agreement under this clause if the Client has failed to remedy such breach following 14 days’ written notice from MDW to do so; or
- 2.10.2 if the Client breaches any other of the material terms of this agreement and such breach is either incapable of remedy or the Client fails to remedy it within a reasonable time following written notice from MDW to do so.
- 2.11 Either party may terminate this agreement with immediate effect during the Contract Term if the other party is subject to an Insolvency Event.
- 2.12 Either party may terminate this agreement for convenience by providing not less than seven months’ notice to the other party. Default or breach of this clause shall result in the application of an early termination fee by the defaulting party which both parties acknowledge and agree (if applicable and set out in Schedule 2).

3 Consequences of termination

- 3.1 On termination of this agreement and subject to the agreement of exit-logistics MDW shall make all reasonable endeavours to procure that all Client Data shall be delivered to the Client in such format as the Client may reasonably request.
- 3.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 3.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right of MDW to charge and be paid the Exit Assistance Fee or the Data Support Fee, the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

4 MDW Obligations

- 4.1 MDW hereby agrees that subject to payment by the Client of all Charges as they fall due under this agreement:
- 4.1.1 the Services shall meet the description set out in **Error! Reference source not found.**; and
- 4.1.2 the Services shall be delivered with reasonable skill and care.

- 4.2 No further commitments are given or assumed by MDW in respect of the Software or the Services or any information which is provided to the Client by MDW and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 MDW does not warrant that the Services will meet any particular purpose or ambition of the Client even where such requirements have been submitted to MDW by or on behalf of the Client and the Client acknowledges that it must rely on its own due diligence and enquiries as to such matters.
- 4.4 MDW agrees to fully investigate and use reasonable endeavours to scope the logistics, feasibility and costs of any change or added functionality or Additional Service requested in writing by the Client. MDW reserves the right to enter into a separate service agreement to deal with such additionality instead of using this MSLA as the appropriate vehicle to take such a project forward.

5 Client Obligations

5.1 The Client shall:

5.1.1 provide MDW with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information, people and other resources as may be required by MDW;

in order to provide the Services, including but not limited to Client Data, security access information and configuration services;

- 5.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement which must include Data Protection Legislation;
- 5.1.3 carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, MDW may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 5.1.4 ensure that the End Users use the Services in accordance with the EULA and any other communicated guidance or documentation and shall be responsible for any End User's breach of this Agreement;
- 5.1.5 obtain and/or maintain and/or continue to satisfy all necessary licences, permissions, consents, lawful bases for processing personal data under Article 6 of the GDPR, special conditions with respect to processing special categories of personal data under Article 9 of the GDPR necessary for MDW, its contractors, employees and agents to perform their obligations under this Agreement, including without limitation the Services (and any related storage of End User's data);
- 5.1.6 ensure that its network and systems comply with the relevant specifications provided by MDW from time to time; and
- 5.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the

Customer's network connections or telecommunications links or caused by the internet.

and;

5.1.8 make suitable adjustments or modifications to its network, systems and hardware (to the extent feasible) so that MDW can implement the Software and Services optimally for the benefit of the Service Specification Schedule.

5.2 MDW or its nominated auditor or accountant shall have the right to access any Client (or sub-contractors or agents') records relevant to the operation of MSLA in a manner that minimises disruption to the Client's business.

6 Configuration services & Integrating with your existing data management tools

6.1 MDW shall carry out the Configuration Services to configure the Software and Services for the Client and shall train a select number of key Client personnel so that it can adequately use the Services, Software and the platform in general terms.

6.2 In performing the Configuration Services, MDW shall:

6.2.1 comply with the Client's reasonable instructions to minimise disruption to the business;

6.2.2 ensure it has adequate organisation and technical measures in place as would be required under Data Protection Legislation.

7 Grant of Licence to use the Metadata Services

7.1 The parties agree and acknowledge that, except as expressly provided under this MSLA and any Service Specification Schedule this MSLA does not transfer or confer ownership of, or create any licences in, any Intellectual Property Rights in the Software, Services or Products which for the avoidance of doubt shall at all times remain under the ownership and control of MDW.

7.2 MDW shall provide the technical support for any Service that is specified, at the times and to the service levels and response times specified in the relevant Service Specification Schedule. In order to develop and enhance the Services, MDW reserve the right to make changes to any Service and to update and issue New Releases for the Software. MDW shall inform the Client in writing at least 14 days before any change is implemented. If as a result of such change, you can demonstrate with clear unarguable evidence that your use of the Services is materially and adversely affected, you may terminate the Service Schedule/s and your subscription to the Services in accordance with the appropriate notice period specified in clause 2.1.

7.3 In consideration of the Client's entry into this Agreement and its payment of the Charges when due and payable, MDW grants to the Client a non-exclusive, revocable and non-transferable licence to use the Software and the Services for the strict purpose of this Agreement and any applicable Service Specification Schedule.

7.4 If at any time your Use of any Service is in material breach of or not in compliance with any applicable national and local laws, regulations and ordinances ("Applicable Laws") you will be in breach of this Agreement and we will be entitled, at our sole discretion, to terminate it under Clause 1.4 and to discontinue the Service.

7.5 Unless expressly authorised under this agreement, the Client shall not itself and shall ensure it is accountable and responsible for its End Users who shall not:

- 7.5.1 use the Software and the Services for any purpose other than the conduct of this Agreement or any associated Service Specification Schedule;
 - 7.5.2 integrate or interface the Software and the Services with any software, system or platform other than the Client Software without the express written consent of MDW obtained in advance of any such integration or interface activity;
 - 7.5.3 attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of source code, object code, branding, Software, Services or Products except to the extent expressly permitted under this MSLA or as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties; and,
 - 7.5.4 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services, Software or the Products except as may be allowed by any applicable law which is incapable of exclusion.
- 7.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of the Software, Services and Products and to notify MDW promptly of any such unauthorised access or use.
- 7.7 The licenced rights and the obligations of this clause 7 shall apply during the Contract Term only and shall automatically cease after the expiry of 6 months after termination of this MSLA.
- 8 Support Services, Hosting Services and Service Levels**
- 8.1 MDW shall make reasonable endeavours to deliver the Support Services and the Hosting Services:
- 8.1.1 in compliance with any service levels and standards prescribed at **Error! Reference source not found.**; and
 - 8.1.2 to ensure that as a minimum the Software meets the Service Schedule Specification during the Contract Term.
- 8.2 The Client shall co-operate with MDW in any manner reasonably required by MDW in order to carry out the Support Services, including prompt provision of all relevant information and data as requested by MDW.
- 8.3 As part of the Support Services and the Hosting Services, MDW shall make available to the Client all New Releases in return for no additional Subscription Fees.
- 8.4 The Client acknowledges that MDW may provide the Hosting Services via a subcontractor and MDW agrees that it shall:
- 8.4.1 be solely responsible for the acts and omissions of the provider of the Hosting Services as if they were MDW' own;
 - 8.4.2 to the extent applicable, procure that any sub-contractor complies with the obligations set out in this agreement as though it were a party to it; and
 - 8.4.3 promptly notify the Client of any event which might adversely affect the continuing provision of the Hosting Services.

9 Payment of Charges

- 9.1 The Charges and any provisions for reasonable and periodic increases to these are set out in **Error! Reference source not found.**
- 9.2 MDW shall submit invoices to the Client containing details of any particular Charge due and payable for that particular billing period (including for example any Subscription Fees, Hosting Charges, Configuration Charges, Support Charges, Additional Service Charges in conjunction with any fees such as the Exit Assistance Fee, the Early Termination Fee, and the Data Support Fee) any of which may be applicable and billable in any given invoice period.
- 9.3 Such invoices shall be remitted to the Client for payment at reasonably regular intervals no less regularly than quarterly and the Client shall pay in full each and every invoice so submitted.
- 9.4 MDW shall invoice the Client and the Client shall pay for any Additional Services agreed by the parties to fall under this Agreement (including any additional code, features or software) monthly in arrears against invoices submitted.
- 9.5 The Charges and any fees or payments capable of being invoiced to the Client are net of tax and therefore any relevant tax will be billed and indicated clearly on each invoice (such as VAT). The Client shall therefore be liable for the amount of any tax, duty or assessment, including any applicable VAT, which it is obliged to pay and/or collect in respect of any supply under the MSLA.
- 9.6 The Client shall make payment of invoices within thirty (30) days of receipt (which shall be the default due date) unless a payment is disputed in good faith in accordance with this clause 9 in which case a reasonable case for delaying payment of said invoice will be respected by MDW.
- 9.7 If the Client fails to make any payment due to MDW under this MSLA by the due date, the Client shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, the Client shall pay the interest together with the overdue amount.
- 9.8 In relation to invoices or payments disputed in good faith, interest under this clause is not payable unless the dispute is resolved in favour of MDW in which case interest will be due from the last possible date for payment (without the payment being overdue) until actual payment is made.

10 Dispute resolution

- 10.1 If a formal dispute arises out of or in connection with this MSLA or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- 10.1.1 Both parties will make every effort to resolve the Dispute informally between them within the first five days of becoming aware that a formal Dispute has been raised by the other party; after which time,
- 10.1.2 either party may give to the other written notice of the Dispute, setting out its nature and full dates, times, evidence and grievances (**Dispute Notice**), together with relevant supporting documents;

- 10.1.3 on service of the Dispute Notice, it shall be referred to the relevant relationship managers (or customer service managers) from the Client and MDW who shall endeavour for no less than five days in good faith to resolve it; after which time,
- 10.1.4 the parties will escalate the matter to their respective managing directors or chief executive officers as the case may be who will have a further five days to settle the matter amicably and without further interventions; after which time,
- 10.1.5 if the respective chief executive officers and/or managing director cannot succeed to resolve the issue agreeably, then both parties hereby submit to within seven further days to submit the matter to mediation in accordance with the CEDR Model Mediation Procedure.
- 10.2 The commencement of mediation shall not prevent the parties commencing or continuing legal proceedings in relation to the Dispute.
- 11 Sub-Contracting and assignment**
- 11.1 MDW may assign, novate or otherwise dispose (a “transfer”) of any or all of its rights and obligations or sub-contract the whole or any part of its obligations under this MSLA without the prior written consent of the Client so long as such transfer is to a similarly reputable and competent provider (in the opinion of MDW) of software, or IT or data management and analytical services.
- 11.2 The Client shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations or sub-contract the whole or any part of its obligations under this MSLA without the prior written consent of MDW.
- 12 Limitation of liability**
- 12.1 The Client acknowledges that it has accepted the terms and conditions in this MSLA with full knowledge that MDW must limit its liability fairly and proportionately and that the Charges when being set have been calculated accordingly.
- 12.2 Subject to clause 12.3, unless expressly provided in this agreement, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of profit, revenue, contracts, anticipated savings, goodwill or business opportunities, management time or data, whether direct or indirect.
- 12.3 Each party shall at all times take all reasonable and pro-active steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this MSLA.
- 12.4 MDW's total aggregate liability shall be in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this MSLA limited to 100% of the Charges paid by the Client to MDW in the year the relevant claim or liability arose.
- 12.5 The Client's total aggregate liability to MDW shall in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this MSLA (including any unauthorised access to, or use or misuse of, any Service by any of your employees, agents, subcontractors, or any third party (including any End User) if that access or use or misuse was enabled or permitted by you; or the misuse or unauthorised use of any personal data by you or your sub-contractors or processors or the misuse of any

Confidential Information by you or your sub-contractors shall be limited in respect of any one incident or series of incidents to one million pounds sterling (£1,000,000).

- 12.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

12.6.1 fraud or fraudulent misrepresentation;

12.6.2 death or personal injury caused by its negligence;

12.6.3 breach of any obligation as to title implied by statute.

13 Insurance

- 13.1 Both parties shall maintain in force for the term of this Agreement with a reputable insurer a level of insurance cover which is proportionate to the value of this Agreement and which shall as a minimum include

13.1.1 Professional indemnity (£1 million +)

13.1.2 Public and product liability (£1 million +)

13.1.3 Employers liability (£1 million+)

- 13.2 Both parties shall ensure that all their respective consultants, agents, and sub-contractors involved in the provision or receipt or integration of the Services or the Software or the Products shall hold and maintain appropriate equivalent cover to the cover held by MDW and the Client under this clause 13 (the **Required Insurances**).

14 Client Data, privacy and data protection

- 14.1 The Client and End Users (or either of them as the case may be) shall be responsible for the legality, reliability, integrity, quality, accuracy, and for determining the purposes and the manner of any processing of personal data. This responsibility shall extend to the provision at all times of sufficient lawful bases for the processing of personal data as required under Article 6 of the GDPR and shall extend to the processing of special categories of personal data (which may include medical, health, genetic and biometric data and therefore requires increased levels of protection) as required under Article 9 of the GDPR.

- 14.2 In respect of the Client Data inputted by the Client or provided to MDW the Client acknowledges that the accuracy of any reports or other information or outputs by MDW, or created using the Services are largely dependent on the accuracy of the Client Data supplied by it to MDW.

- 14.3 Client Data is used by the Client and End Users at their own risk and MDW is not responsible for and provides no warranty as to the accuracy or validity of any Client Data or the legality or sufficiency of protection afforded to the personal data which emanates from the Client and/or End Users.

- 14.4 The parties agree for the purpose of this MSLA the Client shall be the data controller and MDW shall be the data processor in respect of any personal data within the Client Data submitted or inputted onto the MDW platform - though both parties are aware that best practice and circumstance can evolve so that the parties may be joint controllers or processor and sub-processor in particular or rate circumstances.

- 14.5 Both parties will comply with all applicable requirements of the Data Protection Legislation. The Client will ensure that it and its End Users comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 14.6 To the extent that any of the Client Data inputted into any database, field, web-based application or interface, the Client Software, the Software or the Services by the Client (or upon the Client's authorisation) contains personal data, the Client represents and warrants that:
- 14.6.1 it has obtained all required consents or is otherwise satisfied with the lawful basis for the processing of that Client Data by MDW for the purposes of this MSLA (and for any other purpose notified by MDW to the Client or required by MDW under its privacy policy) so that MDW may lawfully use, process and transfer the personal data in accordance with this MSLA;
 - 14.6.2 it has undertaken the additional requisite assessment and is satisfied that the requisite special conditions have been met in order for the Client to instruct MDW to process any medical, health, biometric, or genetic or other special categories of personal data in full adherence to Data Protection Legislation;
 - 14.6.3 it will not use the Client Data for any purpose which may be inconsistent with those identified before or at the time of collection, including as set out in any privacy policy made available or in any terms of use supplied by MDW to End Users or users of the Services or visitors to the MDW website(s) or online URL;
 - 14.6.4 it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 14.6.5 the Client Data is capable of being transferred or stored outside the EEA or the country where MDW's support services or cloud-based solution providers are located but or where certain of the Client's operations or End Users are located in order to carry out the Services and comply with MDW's overall obligations under this MSLA (subject to certain statutory safeguards being in place before any such transfer).
- 14.7 The parties acknowledge that the Client is entirely responsible for, and MDW has no liability for:
- 14.7.1 any Client Data used on or entered into the Services or the Software or the Products by or with the authorisation of the Client;

- 14.7.2 obtaining all consents and possessing the necessary lawful basis for processing any personal data contained within the Client Data to be entered into and/or used in the Services or the Software or the Products; and
 - 14.7.3 any projections, calculations, formulae, payments, information and reports generated by the Services, the Software or the Products and which uses the Client Data.
- 14.8 The Client warrants that all relevant data subjects have given or will have given their informed consent to the Client (or will have done so) to expressly permit its sub-contractors such as MDW:
 - 14.8.1 to disclose any personal data relating to them in response to any subject access request made of either MDW or the Client relating to this MSLA;
 - 14.8.2 to process personal data for the purposes of delivering the Services, Software and the Products; and
 - 14.8.3 to retain personal data for as long as is necessary and envisaged under MDW privacy policy and/or the (shortform) data protection addendum set out in **Error! Reference source not found..**
- 14.9 The Client shall indemnify and keep MDW fully indemnified against all claims, demands, regulatory or other investigations or enquiries, actions, costs, expenses (including legal costs and disbursements) and against all losses and damages arising from or incurred by MDW by reason of any apparent breach by the Client of the warranties, representations and commitments contained in this clause 14.
- 14.10 The Client acknowledges and agrees that MDW may:
 - 14.10.1 use any general know-how it derives from the processing of the Client Data or from performing its role under this MSLA the purpose of enhancing and developing the Services, Software or the Products including the enhancement of the End User experience; and
 - 14.10.2 process and make use of any Client Data (provided that in the case of Personal Data it is converted into anonymised or pseudonymised format) for the purpose of its own internal research and development purposes.
- 14.11 The parties agree that:
 - 14.11.1 **Error! Reference source not found.** sets out the scope, nature and purpose of processing by MDW, the duration of the processing and the types of personal data and categories of data subject;
 - 14.11.2 MDW may use Client Data in an aggregated and anonymised format (which is not capable of identifying any individual End User) for any purpose set out in the MDW privacy policy; and
 - 14.11.3 To a large extent individual End Users have control over what data they share, input or upload onto the web interface, any application or the Services, Software or the Products and the platform generally and who that data is shared with.
- 14.12 Accordingly, MDW cannot and does not assure that:
 - 14.12.1 it will be permitted to provide access to all data relating to any given data subject or End User to the Client if asked to do so; or that

- 14.12.2 any given End User will continue to give the Client access to the data sets it directly submits or inputs or uploads onto MDW platform.
- 14.13 For the purposes of this clause the terms “personal data”, “data controller”, “data processor” and “data subjects” shall be as defined in the UK Data Protection Legislation.
- 14.14 In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy under this MSLA shall be for MDW to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by MDW or its third party cloud-hosting or other service provider as the case may be.
- 14.15 Without prejudice to the generality of clause 14 MDW shall, in relation to any personal data processed in connection with the performance this MSLA:
- 14.15.1 process that personal data only on the documented written agreement of the Client as data controller (which shall be deemed provided through this MSLA and the agreed data protection addendum at **Error! Reference source not found.**) unless MDW is required by the laws of any member of the European Union or by the laws of the European Union applicable to MDW and/or UK Data Protection Legislation to process personal data (“**Applicable Law**”). Where MDW is relying on Applicable Law as the basis for processing personal data, MDW shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit MDW from so notifying the Client (in cases where confidentiality of such activity is legal required to be maintained);
- 14.15.2 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
- 14.15.3 The Client or MDW has provided appropriate safeguards in relation to the transfer;
- 14.15.4 the data subject has enforceable rights and effective legal remedies;
- 14.15.5 MDW complies with its obligations under the UK Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and,
- 14.15.6 MDW complies with reasonable instructions notified to it in addition to this MSLA and **Error! Reference source not found.** by the Client with respect to the processing of the personal data;
- 14.16 MDW hereby agrees to:
- 14.16.1 assist the Client, its End Users, any supervisory authority, regulator and any data subject for a fair and equitable administration fee invoiced to and payable by the Client, in responding to any data-related request or a data subject and in ensuring compliance with all relevant obligations under the Data Protection Legislation and the UK Data Protection Legislation with respect to security, breach notifications, impact assessments, enquiries, investigations and consultations with supervisory authorities or regulators (individually or collectively on a time and materials expended basis, a “**Data Support Fee**”);
- 14.16.2 as a data processor, notify the Client only without undue delay on becoming aware of a personal data breach affecting it or any of its End

Users (leaving any subsequent reporting of the data breach to the regulatory authorities in the hands of the relevant data controller); and,

- 14.16.3 at the written request of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data.
- 14.17 The Client hereby consents to MDW appointing any third-party processor (“**Sub-Processor**”) of personal data under this MSLA so long as in future (i) appropriate due diligence has been carried out by MDW in relation to such new Sub-Processor and (ii) the Client is notified about any new Sub-Processor being awarded a contract for data-related services by MDW (such as network security, penetration testing, cloud hosting etc).
- 14.18 Either party may, at any time on not less than 30 days' notice and by agreement revise this clause 14 by replacing it with any applicable controller to processor **standard contractual clauses** or similar terms which may or may not form part of an applicable certification scheme (in the event that this severable clause 14 is deemed by any regulator or good practice note or guidance to be deficient in terms of standard prevailing at the time - in which case this clause shall be updated by agreement and variation to this MSLA).
- 15 Confidentiality**
- 15.1 The parties shall keep confidential the terms and the fact of the existence of this MSLA and shall use all reasonable endeavours to prevent their employees, sub-contractors and agents from making any disclosure to any person of any matters relating hereto.
- 15.2 Either party may be given access to Confidential Information of the other party in order to perform its obligations in connection with this agreement. A party's Confidential Information shall not be deemed to include information that:
- 15.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 15.2.2 was in the other party's lawful possession before the disclosure;
- 15.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 15.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 15.3 Subject to clause 15.4, each party shall hold the other's Confidential Information in confidence and not make it available to any third party, or use it for any purpose other than those purposes authorised under this MSLA.
- 15.4 A party may disclose Confidential Information to the extent that it is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction.
- 15.5 The Client acknowledges that details of the Software and the Products (including underlying object code and source code), the Services and the results of any anonymised or pseudonymised processing or use of Client Data by MDW constitute MDW' Confidential Information.

- 15.6 MDW acknowledges that the Client Data is the Confidential Information of the Client and that MDW's only rights in respect of such data are those set out in this MSLA.
- 15.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- 16 Termination**
- 17 Force majeure**
- 17.1 Subject to the remaining provisions of this clause neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 17.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- 17.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the Effective Date and extent of such delay or prevention, the cause thereof and its estimated duration;
- 17.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- 17.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 17.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 18 Non-solicitation**
- 18.1 Neither party shall (except with the prior written consent of the other) during the term of this MSLA and for a period of six months thereafter, solicit the services of any employee or consultant of the other party who has been engaged in the provision of any Services or the management or delivery of this MSLA either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign which is not specifically targeted at such staff of the other party.
- 18.2 The party in breach of clause 18.1 shall, on demand, pay to the other party a sum equal to one year's basic salary of the employee or consultant in question plus the avoided recruitment costs incurred in replacing such person (which shall be set at 33.3% of the salary for the post in question).
- 19 Waiver**
- 19.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20 Severability**
- 20.1 If any provision or part-provision of this agreement is or becomes invalid, obsolete, illegal or unenforceable, or out of synchronisation with Data Protection Legislation

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(with particular reference to evolving standards of protection for special categories of personal data and updates to any standard model clauses approved for widespread use) it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

- 20.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 Partnership or agency

- 21.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.
- 21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22 Third party rights

- 22.1 No one other than a party to this agreement shall have any right to enforce any of its terms.

23 Notices

- 23.1 Any notice given to a party under or in connection with this agreement shall be in writing marked for the attention of a named director or senior manager ("**Recipient**") of the receiving party and shall be:

23.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

23.1.2 sent by email to the Recipient of the receiving party.

- 23.2 Any notice shall be deemed to have been received:

23.2.1 if delivered by hand, on signature of a delivery receipt;

23.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

23.2.3 if sent by email exactly one hour after the item is time-stamped as sent in the sender's sent items folder.

- 23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24 Entire agreement

- 24.1 This agreement in addition to any substantially or fully agreed heads of terms between the parties, plus the schedules at the end and the recitals at the beginning of this MSLA and any other documents annexed to it or otherwise

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referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 24.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

25 Counterparts

- 25.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

26 Governing law

- 26.1 This MSLA and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27 Jurisdiction

- 27.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This MSLA has been entered into on the date stated at the beginning of it.

Signed by
Chief Executive Officer Director

for and on behalf of
METADATAWORKS

.....
Director / Secretary or Witness

Signed by [NAME][POSITION]

for and on behalf of Client

.....
Director

Name typed:

.....

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Director/Secretary or Witness