

1. SDN Mesma Group – Terms and Conditions for the provision of Mesma Software

Please read these terms carefully before ordering any software from this website. By signing your "quote", you agree to the terms of this licence, which will bind you. The terms include limitations on our liability (see clause 13).

You also acknowledge that the terms require you to pay fees in advance (see clause 10). By agreeing to these terms, you are agreeing to the payment of these fees in advance. This contract cannot be cancelled other than as set out in this terms.

These Terms and Conditions ("Conditions") apply between you, the individual, firm or company who submits an order for the Software via the Platform, and is named as the customer in the Order Confirmation (the "Customer" or "you") and SDN Mesma Group Limited, a company incorporated and registered in England and Wales with company number 05945050 whose registered office is The Core, Newcastle Helix, Bath Lane, Newcastle Upon Tyne NE4 5TF (the "Supplier" or referred to as "us/we/our").

Our VAT number is 92796553 , and you can contact us at The Core, Newcastle Helix, Bath Lane, Newcastle Upon Tyne NE4 5TF and by email to invoices@strategicdevelopmentnetwork.co.uk

1. Interpretation

The definitions and rules of interpretation in this clause apply in these terms.

"Affiliate" means an entity controlled by, under common control with, or controlling such party, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity;

"Authorised Users" are those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2.4;

"Back-Up Policy" means the Supplier's back up policy as provided to the Customer from time to time, whether via the Platform **here** or otherwise;

"Business Day" means a day other than a Saturday, Sunday or public holiday in England;

"Confidential Information" means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5 or clause 12.6;

"Contract" means the contract between you and us for the provision of the Software and the Services, which consists of your Order, these Conditions, and the Order Confirmation;

"Customer" means the customer as named in the Order Confirmation;

"Customer Data" means the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;

"Deliverables" means the content of all reports, analyses, statistics and benchmarking provided from time to time as part of the Services, as described in the Documentation;

"Documentation" means the document made available to the Customer by the Supplier online via **www.mesma.co.uk** or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services;

"Effective Date" means the date of issue of the Order Confirmation;

"Fees" means the fees for each Software Plan and for each Seat as set out in the Order Confirmation, subject to variation in accordance with these Conditions;

"Free Version" means a free-of-charge Software Plan with limited functionality;

"Free Version Term" means, where stated in the Order Confirmation, the period from the Effective Date during which the Customer may use the Free Version.

"Heightened Cybersecurity Requirements" means any laws, regulations, codes,

guidance (from regulatory and advisory bodies whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time;

"Initial Subscription Term" means the initial term of the contract, as set out in the Order Confirmation, which runs from the Effective Date, or from expiry of the Free Version Term (should the Customer upgrade from the Free Version to another Software Plan);

"Normal Business Hours" means 9.00 am to 5.00 pm Monday to Thursday and 9.00 am to 3pm on a Friday; local UK time. Excluding Bank Holidays in England;

"Order" means the Customer's order for the Software, submitted via the Platform;

"Order Confirmation" means Supplier's written confirmation of the Order;

"Platform" means the Mesma software platform, made available at **www.mesma.co.uk**;

"Renewal Period" means the period described in clause 2.7.2;

"Seats" means the number of "seats" purchased by the Customer pursuant to clause 2, each granting rights of access for one individual, named, Authorised User, to access the Platform and the Services;

"Services" means the subscription services provided by the Supplier to the Customer under this agreement via **www.mesma.co.uk** or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation;

"Software" means the online software applications provided by the Supplier as part of the Services;

"Software Plan" means the software plan of the Software, as described on the Platform and in the Documentation, and selected by the Customer in the Order;

"Subscription Term" means the Free Version Term (if relevant), Initial Subscription Term together with any subsequent Renewal Periods);

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"Support Services Policy" means the Supplier's policy for providing support in relation to the Services - Refer to section 5 of this agreement;

"Third Party Terms" means any and all terms and conditions which are applicable to your use of the Services from time to time, which we make available to you;

"User Subscriptions" means the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement;

"Virus" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise);

or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

"Vulnerability" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term "Vulnerabilities" shall be construed accordingly.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular, and unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement and shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

1.7 A reference to "writing" or "written" excludes faxes but includes e-mail.

2. Formation of contract

2.1 The Contract between us comes into effect and these Conditions become binding when the quote is signed by the client.

2.2 You will be entitled to place an Order by:

- 2.2.1 ticking a box or clicking a button (or something similar) via the Platform. This process will require you to accept these Conditions. By ticking this box and agreeing to pay the Fees (if relevant), you agree to these Conditions; or
- 2.2.2 by accepting the terms of a quotation that we issue to you. In this instance, by accepting our quotation you will be required to accept these Conditions.

2.3 If you are placing an Order on behalf of a company or other legal entity, any acceptance of these terms will be considered a representation by you that you have the authority to bind such entity to these terms and the Contract, in which case the terms "Customer", "you" or "your" shall refer to such entity. If you do not have such

authority, or if you do not agree with these Conditions and the Contract overall, you may not proceed and we will be unable to provide our Services to you.

2.4 If we accept your Order by either of the methods at clause 2.2 above, we will issue a written Order Confirmation in respect of it, at which point a contract exists between us for your use of the Platform.

2.5 When placing an Order, you must confirm the number of Seats you want to purchase, and the relevant Software Plan you want to subscribe for. All Seats must be at the same Software Plan.

2.6 Subject to you purchasing the Seats in accordance with these Conditions, and payment of the Fees (if relevant) and compliance at all times with these Conditions, we grant you a non-exclusive, non-transferable right, without the right to grant sublicences, to permit your Authorised Users to use the Seats, the Services, the Deliverables and the Documentation during the Subscription Term solely for your internal business operations.

2.7 This Contract shall, unless otherwise terminated as provided in this Contract, commence on the Effective Date and shall continue for the following period:

- 2.7.1 where the Order Confirmation includes a Free Version Term, the Contract shall continue for the Free Version Term only unless you notify us in writing that you would like to upgrade to paid Software Plan. The contract will be automatically terminated if there is a paid Software Plan is not in place when the Free Version Term reaches its expiry date, and
- 2.7.2 where there is no Free Version Term, the Contract shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for Renewal Periods, unless:

- 2.7.3 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period.

Contract termination notifications must be sent to **accounts@mesma.co.uk** at least 60 days before the end of the Initial Subscription Term.

2.8 The rights provided under this clause are granted to you only (being the Customer named in the Order), and shall not be considered granted to any of your Affiliates and/or sub-contractors.

2.9 We may modify these terms from time to time, and the modified version will form part of the Contract. We will post the most up-to-date version on our website at <http://help.mesma.co.uk/en/> or send the agreement directly to you via email. Your continued use of the Services and Software following modification to the updated terms and conditions constitutes your consent to be bound by the same.

3. User subscriptions

3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.4 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

- 3.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- 3.2.3 each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed at such frequencies as may be notified by the Supplier from time to time and that each Authorised User shall keep their password confidential;
- 3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier immediately at any time or times;
- 3.2.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Contract. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 3.2.6 if any of the audits referred to in clause 3.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

- 3.2.7 if any of the audits referred to in clause 3.2.5 reveal that the Customer has underpaid Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices as at the date of the relevant audit.

3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 3.3.2 facilitates illegal activity;
- 3.3.3 depicts sexually explicit images;
- 3.3.4 promotes unlawful violence;
- 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 3.3.6 is otherwise illegal or causes damage or injury to any person or property;
- 3.3.6 and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4 The Customer shall not:

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- 3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - - 3.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - - 3.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 3.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 3.4.3 use the Services and/or Documentation to provide services to third parties; or
- 3.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation; or
- 3.4.6 introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

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3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any Affiliates or sub-contractors of the Customer.

3.7 The Customer is responsible for ensuring that all Authorised Users comply with the terms of this clause 3, and the remainder of the contract.

3.8 In the event that the Customer becomes aware of any infringement of these terms by an Authorised User, it will notify the Supplier, and the Supplier will be entitled to terminate or suspend that Authorised User's account.

4. Additional user subscriptions, upgrades and downgrades

4.1 Subject to clause 4.3 and clause 4.4, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

4.2 If applicable to the relevant Software Plan you may, at any time, upgrade your Software Plan. This can be done by notifying the Supplier via the Platform or in writing. The change will take effect immediately upon the Supplier issuing a confirmation of order. You will be billed immediately for the additional fees due under the upgraded Software Plan for the remaining time of the applicable Subscription Term. The amount due and owing for the upgraded Software Plan will be reduced by the amount you have already paid for the applicable Subscription Term.

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4.3 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier via the Platform or in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 48 hours of its approval of the Customer's request.

4.4 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant Fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such Fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4.5 From time to time you may request downgrades, which the Supplier may accept at its discretion. In the event that a downgrade is agreed, this shall only take effect from the commencement of the next Renewal Term immediately following the agreement to downgrade.

5. Services

5.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

5.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- 5.2.1 planned maintenance carried out during the maintenance window of 06.00 pm to 06.00 am UK time Monday to Friday and any time on Saturdays, Sundays and UK bank holidays; and
- 5.2.2 unscheduled maintenance performed outside Normal Business Hours.

5.3 The Supplier will, as part of the Services provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.

5.4 The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5.5 During the Term (as defined herein), the Supplier may update or modify the Services or Software or provide alternative Services or Software to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of a third party program. The Supplier's updates or modifications to the Services or Software or provisions of alternative Services or Software will not materially reduce the level of performance, functionality, security, or availability of the Services or Software during the Term.

6. Customer data

6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

6.2 You hereby grant to us a perpetual, non-exclusive, transferable, irrevocable worldwide, sub-licensable licence to host the Customer Data and use it to provide

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the Services and Deliverables; to access, view and manipulate the Customer Data and use the Customer Data for the purpose of providing other users of the Software or any other third parties, whether on commercial or non-commercial terms, with anonymised Customer Data, for the purpose of creation by us or by that third party of reports, benchmarking information, and other analyses based on the anonymised Customer Data.

6.3 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at <https://mesma.crisp.help/en/> or such other website address as may be notified to the Customer from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

6.4 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of any personal data which the Supplier processes in connection with this agreement, provided that the Supplier shall comply with its Privacy Statement relating to the privacy and security of the Customer Data available **here** or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion ("Supplier's Privacy Statement").

6.5 Without prejudice to the generality of clause 6.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful

transfer of the all relevant personal data to the Supplier and lawful collection of the same by the Supplier for the duration and purposes of this agreement.

6.6 The Supplier's Privacy Statement sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

6.7 Without prejudice to the generality of clause 6.4, the Supplier shall, in relation to the Customer's personal data:

- 6.7.1 process the same only on the instructions of the Customer unless the Supplier is required by applicable law to process, in which case the Supplier shall notify the Customer of this before performing the processing required by law unless those laws prohibit the Supplier from so notifying the Customer;
- 6.7.2 implement the technical and organisational measures set out in the Supplier's Privacy Statement to protect against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, the Customer's personal data, which the Customer has reviewed and confirms are 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;
- 6.7.3 ensure that any personnel engaged and authorised by the Supplier to process the Customer's personal data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

- 6.7.4 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer's personal data; and
- 6.7.5 at the written direction of the Customer, delete or return the Customer's personal data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by law to continue to process that data. For the purposes of this clause 6.7.5 personal data shall be considered deleted where it is put beyond further use by the Supplier.

6.8 The Customer hereby provides its prior, general authorisation for the Supplier to appoint processors to process the Customer's personal data, provided that the Supplier: (i) shall ensure that the terms on which it appoints processors comply with applicable data protection laws; (ii) shall remain responsible for the acts and omissions of any third party processor; and shall inform the Customer of any intended changes concerning the addition or replacement of third party processors.

6.9 The Customer consents to the transfer of the Customer's personal data outside of the UK and European Union as required for the provision of the Services, provided that the Supplier shall ensure that all such transfers are effected in accordance with applicable data protection laws.

6.10 SDN Mesma Group reserves the right to access data for all clients on a Free Version Term contract.

7. Third party providers

7.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from,

third parties via third-party websites and that it does so solely at its own risk. This includes processing of payments through our "Payment Processor".

7.2 The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. Supplier's obligations

8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

8.2 The undertaking at clause 981 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

8.3 The Supplier:

8.3.1 does not warrant that:

- 8.3.1.1 the Customer's use of the Services will be uninterrupted or error-free; or
- 8.3.1.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
- 8.3.1.3 the Software or the Services will be free from Vulnerabilities; or
- 8.3.1.4 the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

8.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

9. Customer's obligations

9.1 The Customer shall:

9.1.1 provide the Supplier with:

- 9.1.1.1 all necessary co-operation in relation to this agreement; and
- 9.1.1.2 all necessary access to such information as may be required by the Supplier;

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

9.1.2 without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;

9.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

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9.1.6 allow the Supplier to publish its brand logo on the Supplier's website (www.mesma.co.uk);

9.1.7 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

9.1.8 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.

10. Charges and payment

10.1 The Customer shall pay the Fees to the Supplier for the User Subscriptions in accordance with this clause 10.

10.2 When completing your Order, you will be required to provide us with complete contact and billing details. Fees are payable in advance for each of the Initial Subscription Terms and each Renewal Period, and payment will be billed immediately on renewal.

10.3 The Order Confirmation contains details of additional "add-on" modules, and limitations on use for certain features within the agreed pricing (for example for storage). In the event that you purchase add-on modules, further storage, or other services in excess of those in the Order Confirmation, these will be invoiced in advance subject to a further Order Confirmation, via the process at clause 10.2.

10.4 We may use a third party payment processor ("Payment Processor") to invoice you through a payment account, which is linked to your account on the Platform. Where you set up a payment account with the Payment Processor, this is subject to Third Party Terms.

10.5 If we have not received payment by the due date for payment, and without prejudice to any of our other rights and remedies we may, without liability to you, disable your passwords, accounts and access to all or part of the Services and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England base rate, from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.6 All amounts and Fees are payable in pounds sterling, are non-cancellable and non-refundable and are exclusive of value added tax, which shall (where relevant and subject to a valid VAT invoice) be added at the appropriate rate.

10.7 We shall be entitled to increase the Fees in respect of your then existing subscription no more than once in each calendar year, upon giving you at least 90 days' prior notice. Fees will be published via the **www.mesma.co.uk**.

10.8 In relation to the Free Version or any other free-of-charge Services we provide, we shall be entitled to change such Services from being free-of-charge to Fee incurring, at any time, subject to us providing you with prior notice and an opportunity to terminate the Services being provided.

11. Proprietary rights

11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except

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as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

11.3 You must use the latest version of the Software and accept all updates to the Software. We do not customise the Software to specific customers.

11.4 Your licence under these Conditions is not exclusive. We may perform services for your competitors or for other parties whose interests may conflict with yours. We will comply with our obligations under condition 12 (Confidentiality).

12. Confidentiality

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 12.1.2 was in the other party's lawful possession before the disclosure;
- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

- 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

12.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

12.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by

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law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.8 The above provisions of this clause 12 shall survive termination of this agreement, however arising.

13. Indemnity

13.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:

13.1.1 the Customer's use of the Services and/or Documentation; and

13.1.2 any claim that the Supplier's use of the Customer's logo or branding on its website or in other marketing literature, infringes any trade mark of such third party, and shall indemnify the Supplier from any amounts awarded against the Supplier in judgment or settlement of such claims

in each case provided that:

- 13.1.2.1 the Customer is given prompt notice of any such claim;
- 13.1.2.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 13.1.2.2 the Customer is given sole authority to defend or settle the claim.

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13.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- 13.2.1 the Supplier is given prompt notice of any such claim;
- 13.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- 13.2.3 the Supplier is given sole authority to defend or settle the claim.

13.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

13.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- 13.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or
- 13.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

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- 13.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

13.5 The foregoing and clause 14.3.2 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. Limitation of liability

14.1 Except as expressly and specifically provided in these terms:

- 14.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any Customer Data or any other information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- 14.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 14.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

14.2 Nothing in this agreement excludes the liability of the Supplier:

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- 14.2.1 for death or personal injury caused by the Supplier's negligence; or
- 14.2.2 for fraud or fraudulent misrepresentation.

14.3 Subject to clause 15.1 and clause 15.2:

- 14.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 14.3.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate this contract with immediate effect by giving written notice to the other party if:

- 15.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment;
- 15.1.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 15.1.3 the other 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- 15.1.4 the other 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 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;
- 15.1.5 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 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;
- 15.1.6 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 the other party;

- 15.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 15.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.1.9 a creditor or encumbrancer of the other 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 the other party's assets and such attachment or process is not discharged within 14 days;
- 15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.3 to clause 15.1.9 (inclusive);
- 15.1.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 On termination of this agreement for any reason:

- 15.2.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

- 15.2.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 15.2.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- 15.2.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. General

16.1 Force Majeure. We will have no liability to you under the Contract if we are prevented from or delayed in performing our obligations, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or the workforce of any other party), failure of a utility service or transport or telecommunications network, hack or attack on the Platform including a distributed denial of service attack or man in the middle attack, 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

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machinery, fire, flood, storm, pandemic or epidemic, or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.

16.2 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.3 Announcements. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

16.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under this Contract 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.

16.5 Rights and remedies. Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

16.6 Severance. If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16.7 Entire Agreement. The Contract constitutes the whole agreement between us and supersedes any previous arrangement, understanding or agreement between us relating to the subject matter it covers. We both acknowledge and agree that in entering into the Contract neither of us relies on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in this Contract.

16.8 Assignment. You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any your rights or obligations under the Contract. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.9 No partnership or agency. Nothing in the Contract is intended to or shall operate to create a partnership between us, or authorise either of us to act as agent for the other, and neither of us shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16.10 Third party rights. The Contract does not confer any rights on any person or party (other than each of us and, where applicable, each of our successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

16.11 Notices. Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the addresses set out for each of us in the Order Confirmation, or by email to the email addresses set out in the Order Confirmation, or such other address as may have been notified for such purposes in accordance with this condition. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-

class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received 24 hours from the date of sending, unless such time is not in business hours, in which case receipt shall be deemed at 9 am on the next Business Day).

16.12 Governing law and Jurisdiction. The Contract 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. We both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

End.